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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
M6

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

2 Name OPALEC, Roderick  
(Last) (First) (Initial)

3 Prisoner Number H-33214

4 Institutional Address CTF, P.O. Box 689/ East Dorm 64-Low  
5 Soledad, CA. 93960-0689

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

8 RODERICK OPALEC

9 (Enter the full name of plaintiff in this action.)

10 vs.

11 Ben Curry, Warden

12 Case No. 08-252

13 (To be provided by the clerk of court)

14 **PETITION FOR A WRIT  
OF HABEAS CORPUS**

15 (PR)

16 (Enter the full name of respondent(s) or jailor in this action)

**Read Comments Carefully Before Filling In**

**When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these  
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,  
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in  
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of  
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in  
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States  
25 District Court for the district in which the state court that convicted and sentenced you is located. If  
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,  
27 your petition will likely be transferred to the district court for the district that includes the institution  
28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 Los Angeles Co. Sup. Ct. Los Angeles, CA.

15 Court Location

16 (b) Case number, if known TA009295

17 (c) Date and terms of sentence Life w/Poss. of Parole + 3yrs.

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes XXX No       

20 Where?

21 Name of Institution: Correctional Training Facility

22 Address: P.O. Box 689, Soledad, CA. 93960-0689

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Attempted Murder, 1st, P.C. §664/187(a), Use of Firearm,

27 12022.5(a)

1                   3. Did you have any of the following?

2                   Arraignment:                   Yes XX           No \_\_\_\_\_

3                   Preliminary Hearing:           Yes XX           No \_\_\_\_\_

4                   Motion to Suppress:           Yes \_\_\_\_\_           No \_\_\_\_\_

5                   4. How did you plead?

6                   Guilty XX   Not Guilty \_\_\_\_\_   Nolo Contendere \_\_\_\_\_

7                   Any other plea (specify) \_\_\_\_\_

8                   5. If you went to trial, what kind of trial did you have?

9                   Jury \_\_\_\_\_   Judge alone \_\_\_\_\_   Judge alone on a transcript \_\_\_\_\_

10                  6. Did you testify at your trial?                   Yes \_\_\_\_\_           No \_\_\_\_\_

11                  7. Did you have an attorney at the following proceedings:

12                  (a)           Arraignment                   Yes XX           No \_\_\_\_\_

13                  (b)           Preliminary hearing           Yes XX           No \_\_\_\_\_

14                  (c)           Time of plea                   Yes XX           No \_\_\_\_\_

15                  (d)           Trial                           Yes \_\_\_\_\_           No \_\_\_\_\_

16                  (e)           Sentencing                   Yes XX           No \_\_\_\_\_

17                  (f)           Appeal                           Yes \_\_\_\_\_           No XX

18                  (g)           Other post-conviction proceeding           Yes \_\_\_\_\_           No XX

19                  8. Did you appeal your conviction?                   Yes \_\_\_\_\_           No XX

20                  (a)           If you did, to what court(s) did you appeal?

21                  Court of Appeal                           Yes \_\_\_\_\_           No \_\_\_\_\_

22                  Year: \_\_\_\_\_                           Result: \_\_\_\_\_

23                  Supreme Court of California                   Yes \_\_\_\_\_           No \_\_\_\_\_

24                  Year: \_\_\_\_\_                           Result: \_\_\_\_\_

25                  Any other court                           Yes \_\_\_\_\_           No \_\_\_\_\_

26                  Year: \_\_\_\_\_                           Result: \_\_\_\_\_

27                  (b)           If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes        No       

2 (c) Was there an opinion? Yes        No       

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes        No       

5 If you did, give the name of the court and the result:

6 \_\_\_\_\_  
7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
9 this conviction in any court, state or federal? Yes XX No       

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
13 for an order authorizing the district court to consider this petition. You may not file a second or  
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: U.S. District Ct., Northern Dist.Cal.

19 Type of Proceeding: Petition for Writ of Habeas Corpus

20 Grounds raised (Be brief but specific):

21 a. Due Process Violation by Board of Parole Hrgs.

22 b. \_\_\_\_\_

23 c. \_\_\_\_\_

24 d. \_\_\_\_\_

25 Result: ORDER GRANTING PETITION Date of Result: 03/20/08

26 II. Name of Court: \_\_\_\_\_

27 Type of Proceeding: \_\_\_\_\_

28 Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_

2 b. \_\_\_\_\_

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_

7 Type of Proceeding: \_\_\_\_\_

8 Grounds raised (Be brief but specific):

9 a. \_\_\_\_\_

10 b. \_\_\_\_\_

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_

15 Type of Proceeding: \_\_\_\_\_

16 Grounds raised (Be brief but specific):

17 a. \_\_\_\_\_

18 b. \_\_\_\_\_

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes XX No \_\_\_\_\_

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SEE ATTACHED WRIT OF HABEAS CORPUS

6 \_\_\_\_\_

7 Supporting Facts: SEE ATTACHED WRIT OF HABEAS CORPUS.

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 Claim Two: SEE ATTACHED WRIT OF HABEAS CORPUS

12 \_\_\_\_\_

13 Supporting Facts: SEE ATTACHED WRIT OF HABEAS CORPUS

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 Claim Three: SEE ATTACHED WRIT OF HABEAS CORPUS

18 \_\_\_\_\_

19 Supporting Facts: SEE ATTACHED WRIT OF HABEAS CORPUS

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Roderick Opalec v. Ben Curry, Case No. CV06-06459 MHP.

5 \_\_\_\_\_  
6 \_\_\_\_\_

7 Do you have an attorney for this petition? Yes        No       

8 If you do, give the name and address of your attorney:  
9 \_\_\_\_\_

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on 5/18/08

13 Date

R. Opalec

14 Signature of Petitioner

15 (Rev. 6/02)

16  
17  
18  
19  
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21  
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PRAYER FOR RELIEF

## POINTS AND AUTHORITIES

Name/Title

**In re Bramble**  
(1947) 31 Cal.2d 43, 51 [6] P.2d 411

People v. Stuart 47 Cal.2d 167, 175 [7] 302 P.2d 5, 55 A.L.R.2d 705 (1956)

People v. Smith  
(1955) 44 Cal.2d 77, 79 [2] 279 P.2d 33

In re McVickers  
(1946) 29 Cal.2d 264, 278, 176 P.2d 40

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(1946) 28 Cal.2d 121, 143 [20] 159 P.2d 1

People v. Ralph  
(1944) Cal.2d 575, 581 [2] 150 P.2d 401

**Biggs v. Terhune**  
(9th Cir. 2003) 334 F.3d 910, 914, 915, 916

In re Ramirez  
(2001) 94 Cal.App.4th 549, 564-565, 571

Edward v. Balisok  
(1997) 520 U.S. 541, 648

In re Caswell  
92 Cal.App.4th 1017, 1029

People v. Dubon  
90 Cal.App.4th 949, 952, (2001)

Charlton v. Federal Trade Comm.  
543 F.2d 903-907, 908 (D.C. Cir. 1976)

McQuillion v. Duncan  
306 F.3d 901-910. (9th Cir. 2002)

**In re Smith**

Kentucky Dept of Corrections v. Thompson  
490 U.S. 454, 459-460 (1989)

Board of Pardons v. Allen  
(1987) 482 U.S. 369 376-78

Greenholtz v. Inmates of Neb. Penal & Corr. Complex  
(1979) 442 U.S. 1 11-12

1 POINTS AND AUTHORITIES (continued)

2 Name/Title

3 U.S. v. Guagliardo  
275 F.3d 868-872, (9th Cir. 2002)

4 Graynet v. City of Rockford  
5 408 U.S. 104, 108-109 (1972)

6 Irons v. Warden  
358 F.Supp.2d 936 (E.D. Cal. 2005)

7 In re Scott  
8 34 Cal.Rptr.3d at 919-920, 133 Cal.App.4th at 594-595

9 Shaputis  
37 Cal.Rptr.3d at 335

10 In re Rosenkrantz  
11 29 Cal.4th at 654-661

12 In re Smith  
114 Cal.App.4th 343, 370,372

13 Caswell v. Calderon  
14 363 F.3d 832, 389 (9th Cir. 2004)

15 Scott  
119 Cal.4th at 899

16 Scott  
17 133 Cal.App.4th at 595, 34 Cal.Rptr.3d at 919-920

18 Superintendent v. Hill  
472 U.S 445, 455-457 (1985)

19 In re Minnis  
20 (1972) 7 Cal.3d 639, 643, n.2

21 People v. Morse  
(1964) 60 Cal.2d 631, 643, n.8

22 Masoner  
23 2004 WL1090177 \*1-2

24 Bair  
2005 WL2219220 \*12 n.3

25 Williams v. State of New York  
26 (1949) 337 U.S. 241, 247

27 Sass v. Calif. Board of Prison Terms  
376 F.Supp.2d (E.D. Cal. 2005)

**POINTS AND AUTHORITIES (continued)****Title/Name**

In re Lee  
49 Cal.Rptr.3d 931

In re Elkins  
50 Cal.Rptr.3d 503

Rosenkrantz v. Marshall  
774 F.Supp.2d, 1063 (C.D. Cal. 2006)

Blankenship v. Kane,  
2006 WL5215627 \*3 (N.D. Cal. 2006)

Murille v. Perez  
2005 L2592420 \*3n.1. (C.D. Cal. 2005)

Siafullah v. Carey  
2005 WL1555389 \*8 (E.D. Cal. 2005)

Superintendent Steve Lomas Hill  
472 U.S. at 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985)

Rojas v. Neilson  
428 F.3d 1229, 1232, (9th Cir. 2005)

Sanchez v. Kane,  
444 F.Supp.2d 1049 (C.D.Cal. 2006)

Delgado v. Lewis  
233 F.3d 976, 982 (9th Cir. 2000)

Pham v. Terhune  
400 F.3d 740, 742 (9th Cir. 2005)

Hines v. Thompson  
336 F.3d 848, 853 (9th Cir. 2003)

Pirtle v. Morgan  
313 F.3d 1160 , 1167 (9th Cir. 2002)

Powell v. Gomez  
33 F.3d 39, 40

Earp v. Oronski  
(9th Cir. 2003) 372 U.S. 293 (1963)

Keeney v. Tamaya-Reyes  
504 U.S. 1, 5 1992

Taylor v. Maddox  
(9th Cir. 2004) 336 F.3d 992, 1001.

**POINTS AND AUTHORITIES (continued)**

Title/Name

**In re Lawrence**  
(May 22, 2007) Cal.Rptr.3d WL1475283

In re Elkins  
(2006) 144 Cal.App.4th 475, 487

In re Lee  
(2006) 143 Cal.App.4th 1400, 1408

In re Barker  
May 29, 2007, DJDAR 7548

Martin v. Marshall  
431 F.Supp.2d at p.1047

CCR, Title 15, Division 2  
§2000(b)(49)  
§2000(b)(62)(90)  
§2402  
§2402(a)(b)

Penal Codes  
§ 3041  
§ 3041(a)  
§ 3041(b)

Evidence Code  
§115

California Constitution, Article V  
§8(b)

**MEMORANDUM OF POINTS AND AUTHORITIES**

PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONALLY AND STATUTORILY PROTECTED RIGHT TO THE LIBERTY INTEREST IN THE EXPECTATION OF PAROLE UNDER PENAL CODE §3041(b) WHICH ATTACHED AT THE TIME OF INCARCERATION.

The due process clause of the 5th and 14th Amendment prohibits a state action that deprives a person of life, liberty or property without due process.

However, a person alleging such a violation must establish that (a), he had protection; (b) that he was deprived of such a protection; and, (c) that the procedure which led to the deprivation was constitutionally deficient. Kentucky Dept. of Corrections v. Thomas, 490 U.S 459-460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); McQuillion v. Duncan, 306 F.3d 895, 900 (9th Cir. 2002).

#### A. EXISTENCE OF A LIBERTY INTEREST.

The Supreme Court held in 1979, and reiterated in 1987 that, "a state's statutory scheme, if it uses mandatory language, creates a presumption that parole release will be granted when or unless certain designated findings are made, and then, thereby, gives rise to a constitutionally protected 'Liberty Interest'". McQuillion v. Duncan, supra, 306 F.3d at 901, (citing Greenholtz v. Nebraska Penal Institute, 442 U.S. I, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979) and Board of Pardons v. Allen, 482 U.S. 369, 373, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987)).

Recently, our Ninth Circuit has "held" that California's parole scheme created such a liberty interest because Penal Code §3041 uses mandatory language and is similar to the Nebraska and Montana statutes addressed in *Greenholtz*, *supra*, and

1 Allen, supra. (See McQuillion, supra, 306 F.3d at 901-901).

2 Not only did the Ninth Circuit hold that "Section 3041 of  
 3 the Penal Code creates in every inmate a cognizable liberty  
 4 interest in parole which is protected by the procedural  
 5 safeguards of the due process clause," but further held that  
 6 "the interest arises upon the incarceration of the inmate."  
 7 Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir. 2003).

8 Two United States Supreme Court decisions, Greenholtz v.  
 9 Inmates of Nebraska Penal and Correctional Complex, (1979) 442  
 10 U.S. 1, 12, decided in 1979 and Board of Pardons v. Allen,  
 11 (1987) 482 U.S. 369, 381, decided in 1987, held the Federal Due  
 12 Process Clause creates a constitutional liberty interest for  
 13 convicted persons in certain jurisdictions. The existence of  
 14 this right depends on whether the state employs "mandatory  
 15 language" indicating parole will be granted if certain findings  
 16 are made, Board of Pardons v. Allen, supra, 482 U.S. at pages  
 17 377-381. In 2002 the Ninth Circuit examined the California  
 18 parole scheme in McQuillion v. Duncan, (9th Cir. 2002) 306 F.3d  
 19 895 and found it "uses mandatory language and is largely  
 20 parallel to the schemes found in Greenholtz and Allen,"  
 21 McQuillion v. Duncan, supra, 306 F.3d at page 901. Accordingly,  
 22 the McQuillion court found a "liberty interest" was created under  
 23 the federal constitution for state prisoners in California,  
 24 McQuillion v. Duncan, supra, 306 F.3d at page 901.

25 While it is true post McQuillion, the California Supreme  
 26 Court had occasion to visit and decide in In re Dannenberg that  
 27 "life" prisoners did not have a liberty interest in the  
 28 expectation that the Board of Parole Hearings would engage in

1 "uniform term" analysis under Penal Code §3041(a) if it  
2 demonstrated that public safety warranted denial of parole under  
3 §3041(b). That court did not hold, however, that there is no  
4 protected liberty interest in parole whatsoever. Indeed,  
5 California courts have continued to analyze such claims. See In  
6 re Shaputis, 135 Cal. App. 4th, 217, 224, 231-232, Cal.Rptr.3d  
7 324 (citing Dannenberg); In re Scott, 133 Cal.App.4th 573, 34  
8 Cal.Rptr.3d 905 (2005); In re Lee, 49 Cal.Rptr.3d 931; In re  
9 Elkins, 50 Cal.Rptr.3d 503; In re Lawrence, (May 22, 2007),  
10 Cal.Rptr.3d WL1475283. Post Dannenberg, even federal courts have  
11 uniformly, save one District court decision (Eastern District of  
12 California), which seemingly reversed itself in its very next  
13 case, [see Sass v. California Board of Prison Terms, 376  
14 F.Supp.2d, 975, 982 (E.D. Cal. 2005), which was recently  
15 overruled by the Ninth Circuit in Sass v. Board of Prison Terms  
16 376 F.Supp.2d, 975, 982, (9th Cir. 2006), and is currently under  
17 appeal. (See and compare Sass, supra, to Bair v. Folsom State  
18 Prison, 2005 WL2219110 fn.3 (E.D. Cal. 2005), Report and  
19 Recommendations adopted by 2005 WL3081634 fn.1 (E.D. Cal.  
20 2005).], have followed the reasoning in McQuillion, supra,  
21 establishing a liberty interest. Because the Ninth Circuit  
22 analyzed the liberty interest which arose from California's  
23 Penal Code §3041(a), Dannenberg does not undermine the Ninth  
24 Circuit decision in McQuillion. Therefore, McQuillion v. Duncan  
25 holds that the mandatory language of Penal Code §3041(b)  
26 creating a liberty interest in parole remains controlling  
27 precedent. [See Rosenkrantz v. Marshall, 774 F.Supp.2d 1063  
28 (C.D. Cal. 2006); Blankenship v. Kane, 2006 WL5215627 \*3 (N.D.

1 Cal. 2006); Murille v. Perez, 2005 W.2592420 \*3 N.l (C.D. Cal.  
 2 2005); Saifullah v. Carey, 2005 WL1555389 \*8 (E.D. Cal. 2005)].

3 Thus, petitioner has clearly established not only that he  
 4 has a constitutionally protected liberty interest but that he  
 5 was denied this liberty by the denial of parole by the Board of  
 6 Parole Hearings on July 12 , 2006.

7 **B. PROCEDURES WHICH LED TO DEPRIVATION OF LIBERTY.**

8 It is established principles of due process that a prisoner  
 9 must provided notice of the hearings; and opportunity to be  
 10 heard; and, statement of reasons, for denial of parole.

11 Petitioner agrees that he was provided each of these  
 12 protections. However, the United States Supreme Court has  
 13 expanded these protections to include:

14 "In a variety of contexts, the court has  
 15 recognized decisions resulting in a loss of an  
 16 important liberty interest violates due process  
 17 if the decision is not supported by some  
 18 evidence." Superintendent v. Hill, 472 U.S. at  
 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356  
 (1985); Rosenkrantz v. Marshall, 444 F.Supp.2d  
 1063 (C.D. Cal. 2006) fn. 13; Rojas v. Neilson,  
 428 F.3d 1229, 1232 (9th Cir. 2005)[*Per curiam*]

19 The court further held:

20 "Although '[T]he some evidence standard is  
 21 minimally stringent', Powell v. Gomez, 33 F.3d  
 39, 40, the evidence underlying the  
 22 [Governor's] decision must have some indicia of  
 23 reliability." Hill, supra, 472 U.S. at 455-56,  
 105 S.Ct. at 2774; See also Sanchez v. Kane,  
 444 F.Supp.2d 1049 (C.D. Cal. 2006).

24 As an additional matter the Hill court concluded that the  
 25 decision to deny parole must not be "otherwise arbitrary." Hill,  
 26 supra, at 547.

27 Clearly then, the Hill analysis determined that due process  
 28 requires much more than notice, opportunity to be heard and

1 statement of reason. It also requires (A). evidence which  
2 supports the conclusion; (B). the evidence to be reliably  
3 related to the issue of present dangerousness (CCR Title 15,  
4 §2402(a)); In re Scott, supra, 1373 Cal.App.4th 593, 34  
5 Cal.Rptr.3d 905; In re Elkins, 50 Cal.Rptr.3d 503; In re Lee, 49  
6 Cal.Rptr.3d 931; (C). the evidence must be truthful and (D). the  
7 decision must not be arbitrary or capricious. Sanchez v. Kane,  
8 444 F.Supp.2d 1049 (C.D. Cal. 2006).

9 GROUND ONE:

10 THE BOARD'S DECISION TO DENY PAROLE IS  
11 OTHERWISE ARBITRARY AND IS NOT SUPPORTED BY  
12 "SOME EVIDENCE" CONTAINING AN INDICIA OF  
13 RELIABILITY.

14 In combining the California and federal standards of  
15 review, as they have been articulated thus far by the California  
16 Supreme Court and the Ninth Circuit, respectively, the  
17 commitment crime can lack the power to supply "some evidence"  
18 supporting a denial of parole because of the interplay between  
19 two factors - the nature of that crime and the passage of time  
20 since its commission. That is, the fact there is "some evidence"  
21 the crime was committed and committed a certain way at a certain  
22 time does not mean that crime necessarily represents "some  
23 evidence", that petitioner's release on parole will pose an  
24 unreasonable risk of danger to the public safety at the present  
25 time. Whether it possesses the necessary predictive value  
26 depends both on the nature of the crime and how long ago it  
27 happened. Petitioner's commitment offense, now over 16 years in  
28 the past does not provide "some evidence" his present release  
would represent an "unreasonable risk" of danger to the

1 community.

2 It is worth noting that the issue before this court is  
3 whether petitioner is suitable for parole, not when he should be  
4 released under the California parole system. The Board's initial  
5 task with respect to any inmate serving an indeterminate  
6 sentence is to determine whether the prisoner is suitable for  
7 parole. That is whether the prisoner "pose[s] an unreasonable  
8 risk of danger to society if released from prison. CCR, Title 15  
9 §2402." Only after the Board deems an inmate suitable is a  
10 release date set. CCR, Title 15, §2282; See also Dannenberg, 34  
11 Cal.4th 1061, 1071 (2005). ("[A] determination of individual  
12 suitability must proceed the setting of a ... parole release  
13 date.") The actual parole release date may well be (in some  
14 cases) a number of years into the future, under the Board  
15 regulations, the release date is established using a matrix that  
16 takes into account the inmate's offense of imprisonment and the  
17 circumstances in which it was committed. CCR, Title 15, §2282.

18 Supreme Court law clearly established a parole decision,  
19 like a prison disciplinary decision, deprives a prisoner of due  
20 process if it is not supported by "some evidence" or is  
21 "otherwise arbitrary." Hill, supra, at 457; McQuillion v. Duncan  
22 306 F.3d 895, 904 (9th Cir. 2002).

23 However, that evidence "must have some indicia of  
24 reliability," Scott I, supra, 119 Cal.App.4th at p.899) and  
25 "suitability determinations must have some rational basis in  
26 fact. (In re Elkins, 144 Cal.App.4th at p.489).

27 As our Supreme Court has summarized it, "the judicial  
28 branch is authorized to review the factual basis of a decision

1 of the board denying parole in order to ensure that the decision  
2 comports with the requirements of due process of law, but ... in  
3 conducting such review, the court may inquire only whether "some  
4 evidence" in the record before the board supports the decision  
5 to deny parole, based upon factors specified by statute and  
6 regulation. If the decision's consideration of the specified  
7 factors is not supported by "some evidence" in the record and  
8 thus is devoid of a factual basis, the court should grant the  
9 prisoner's petition for writ of habeas corpus and should order  
10 the board to vacate its decision denying parole and thereafter  
11 to proceed in accordance with due process of law. (Rosenkrantz,  
12 supra, 29 Cal.4th at p.658, underline added). Finally, as has  
13 been recently stated, because the overarching consideration is  
14 public safety, the test in reviewing the board's decision  
15 denying parole "is not whether some evidence supports the  
16 reasons [the board] cites for denying parole, but whether some  
17 evidence indicates a parolee's release unreasonably endangers  
18 public safety.[Citations]. Some evidence of the existence of a  
19 particular factor does not necessarily equate to some evidence  
20 the parolee's release unreasonably endangers public safety." (In  
21 re Lee, 143 Cal.App.4th at p.1408) (In re Barker, May 29, 2007),  
22 DJDAR 7548) (In re Lawrence, (May 22, 2007) Cal.Rptr.3d  
23 WL1475283) (In re Rosenkrantz, (2002) 29 Cal.4th 616, 665) (In re  
24 Dannenberg, (2005) 34 Cal.4th 1061, 1100).

25 Merely to pick pieces from evidence to create one's version  
26 sufficient to justify an action is not "some evidence"  
27 reasonably related to the circumstances sufficient to deny  
28 parole. Superintendent v. Hill, requires more. The Hill

1 requirement mandates that the evidence relied upon possess not  
2 only an "indicia of reliability" but that is is "reasonably  
3 related to the circumstances so as to constitute some evidence  
4 that the crime was 'particularly egregious'". (i.e. "reasonably"  
5 sufficient to support the decision made). See Hill, 472 U.S.  
6 445, 455-56, (1985). Accordingly, to recite in rote,  
7 circumstances of the crime sufficient under different  
8 circumstances (for instance as one would apply to first degree  
9 murder) and proclaim that sufficient under these circumstances,  
10 does not constitute "some evidence" justifying denial of parole  
11 or establish a current danger to the public. The decision of the  
12 board is unreasonable in light of the volumes of evidence  
13 showing suitability. Furthermore, since the evidence clearly  
14 does not support the board's conclusion, the "conclusion" does  
15 not possess any "indicia of reliability" and is patently  
16 arbitrary and capricious, denying petitioner his liberty  
17 interest in parole. It is clear that the board's finding amounts  
18 to an "unreasonable" determination of the facts in light of the  
19 evidence available to the board at the hearing. Only by  
20 examination may the court determine whether the board's decision  
21 was in fact "unreasonable" or "objectively unreasonable."  
22 Delgado v. Lewis, 233 F.3d 976, 982 (9th Cir. 2000); Pham v.  
23 Terhune 400 F.3d 740, 742 (9th Cir. 2005); Hines v. Thompson,  
24 336 F.3d 848, 853 (9th Cir. 2003); Pirtle v. Morgan, 313 F.3d  
25 1160, 1167 (9th Cir. 2002).

26 **GROUND TWO:**

27                   **THE BOARD FINDING OF UNSUITABILITY AND REFUSAL**  
28                   **OF THE GRANTING OF PAROLE VIOLATED THE**  
                 **PETITIONER'S RIGHT TO DUE PROCESS AND DEPRIVED**

1                   HIM OF HIS FEDERALLY PROTECTED LIBERTY INTEREST  
2                   WHEN THE BOARD DENIED PETITIONER A PAROLE GRANT  
3                   WITHOUT ANY RELIABLE EVIDENCE OR "SOME  
4                   EVIDENCE," IN VIOLATION OF THE 5TH AND 14TH  
5                   AMENDMENT OF THE UNITED STATES CONSTITUTION.

6                   Section 3041 of the California Penal Code creates  
7                   substantial presumption that a parole release date shall be set  
8                   at the initial parole hearing, and in a manner that is uniform  
9                   to other similar offenses. Subdivision (a) and (b), of §3041  
10                  mandates that a parole release date "shall" be set "unless" the  
11                  board finds that the gravity of the commitment offense or  
12                  offenses, or the timing and gravity of past convicted offenses  
13                  are such that a consideration of the public safety warrant not  
14                  setting a release date at that hearing. "Furthermore, if there  
15                  be any reasonable doubt as to identity of offense we are bound  
16                  to resolve that doubt in favor of petitioner." (In re Bramble,  
17                  1947, 31 Cal.2d 43, 51, [6], 187 P.2d 411). Moreover, the rule  
18                  is established that when language which is reasonably  
19                  susceptible of two constructions is used in a penal law,  
20                  ordinarily that construction which is more favorable to the  
21                  offender will be adopted. The defendant is entitled to the  
22                  benefit of every reasonable doubt, whether it arises out of a  
23                  question of fact, or as to the true interpretation of words or  
24                  the construction of language used in a statute. (People v.  
25                  Stuart, (1956), 47 Cal.2d 167, 175, [7], 302 P.2d 5, 55 A.L.R.2d  
26                  705; People v. Smith, (1955) 44 Cal.2d 77, 79 [2], 279 P.2d 33;  
27                  In re Bramble, (1947) supra, 31 Cal.2d 43, 51 [6,7], 187 P.2d  
28                  441; In re McVickers, (1946) 29 Cal.2d 264, 278, 176 P.2d 40;  
                        People v. Valentine, (1946) 28 Cal.2d 121, 143 [20], 159 P.2d 1;  
                        People v. Ralph, (1944), 24 Cal.2d 575, 581 [2], 150 P.2d 401).

1 There is no other criteria in the statute for denying parole to  
2 a prisoner. It appears from the language that "consideration of  
3 the public safety" is nonetheless limited to the gravity of the  
4 offense and/or the timing and gravity of any past "convicted"  
5 offense or offenses. The statute does not encompass or authorize  
6 some of the criteria set forth by the California Code of  
7 Regulations, Title 15, §2402. It does appear that the statute  
8 has been enlarged to include additional criteria not expressly  
9 authorized by the statute.

10 Notwithstanding, the argument set forth in the petition is  
11 not merely an argument about a state law violation. The  
12 presumption vested by the statue is substantial, while the  
13 statutory criteria the board must meet in order to deny parole  
14 is limited to criminal conduct at the time of the offense. For  
15 the board to interpret the statute in such a manner as to deny  
16 parole solely on the commitment offense after the board had  
17 denied petitioner on the exact same point two times, deprives  
18 petitioner of a substantial liberty interest protected by  
19 federal due process. (See Biggs at 334 F.3d 917). The effect of  
20 such an interpretation, established by practice, is to subject  
21 all prisoners to pro forma decisions, where the board goes  
22 through the motion of due processs review, citing post hoc  
23 rationalizations to justify the parole denial, that is now  
24 always the result. This is little different that a decision to  
25 deny parole made without any evidence to support it. Thus, by  
26 misinterpretation, whether inadvertently or intentionally, the  
27 result is not merely a violation because it is an action the  
28 board is simply not authorized to take by the enabling statute

1 that impinges on federally protected liberty interests.  
2 Petitioner relies on this claim which is now brought before the  
3 state court.

4 A. THE BOARD DID NOT MEET THE BURDEN OF PROOF THAT  
5 PETITIONER POSES AN "UNREASONABLE RISK" OF  
6 THREAT TO PUBLIC SAFETY IF RELEASED ON PAROLE.  
7 THE DECISION WAS WITHOUT EVIDENCE AND WAS  
8 ARBITRARY AND CAPRICIOUS, VIOLATING FUNDAMENTAL  
9 DUE PROCESS.

10 The regulatory law requires the board to set a release date  
11 unless it finds that the prisoner poses an "unreasonable risk"  
12 to public safety if released at that time. (15 CCR, §2402). This  
13 is consistent with the enabling state which requires the setting  
14 of a release date.

15 If the preponderate record before the board demonstrates  
16 that petitioner does not pose the "unreasonable risk" (which the  
17 record shows that he does not, from petitioner's last two parole  
18 hearings), a release date must be set.

19 If the board denies petitioner parole without making this  
20 requisite finding based on relevant and credible facts in the  
21 record, then this is not merely a state law violation, but a  
22 deprivation of the substantial liberty interest he has in  
23 obtaining a release date. Failure of the board to act in accord  
24 with the regulations, in such situations, constitutes a  
25 substantive due process violation because it constitutes an  
26 abuse of discretion that unfairly and inaccurately deprives the  
27 prisoner of his right to that federally protected liberty  
28 interest. The board needs more than "some evidence" to arrive at  
their decision, even though once the decision is made, the  
reviewing court needs only to find "some evidence" to support

1 the decision or findings that were made. As petitioner will  
2 point out, the "some evidence" standard is not a "burden of  
3 proof" - although the board and the governor seems to think it  
4 is. Petitioner will demonstrate by clear and convincing facts  
5 that the board's burden of proof is the "preponderance of  
6 evidence" standard, but they totally ignore this in arriving at  
7 their post hoc rationalization to deny parole in nearly every  
8 case. There must be a weighing and balancing process according  
9 to a burden of proof.

10 Thus, petitioner alleges that the board's decision in his  
11 case exceeded the bounds of "review" and was made without the  
12 procedural safeguards required by the Constitution, and without  
13 applying the proper proof necessary to overcome the presumptive  
14 right to release delineated in Penal Code §3041.

15 Statutory law in California applies the "rock bottom"  
16 burden of proof in judicatory proceedings at the "preponderance  
17 of evidence" level. (Evidence Code §115). The board lists under  
18 "good cause," the preponderance evidence (15 CCR, Division 2,  
19 §2001(b)(49), and also lists "relevant" and "material" evidence  
20 as the standard for being valid "evidence." (15 CCR, Div. 2,  
21 §2000(b)(62)(material evidence), and (90)(relevant evidence).  
22 The "good cause" provision is a requirement for decision making  
23 that applies to all substantive decisions. These regulatory and  
24 statutory provisions initiate the weighing and balancing process  
25 of evidence at parole hearings. A responsibility the board must  
26 undertake. The board cannot apply the "some evidence" standard  
27 because it is not a burden of proof. (In re Ramirez, (2001) 94  
28 Cal.App.4th 549 at 564-565; Edwards v. Balisok, (1997) 520 U.S.

1 641, at 648). The "some evidence" applies only to questions of  
2 evidentiary sufficiency as an "additional requirement of due  
3 process, not substituted for other due process requirements."  
4 (Ibid.) The "some evidence" standard is applied only by the  
5 reviewing court to determine if the board's (governor's)  
6 decision is supported by "some evidence," if the court finds the  
7 board complied with all other requisite due process  
8 requirements. If the board failed to apply a critical element in  
9 the weighing and balancing of evidence, such as a burden of  
10 proof, then the court cannot deny the petition because there  
11 isn't "some evidence" in the record to support the decision.  
12 (Scott I, supra, 119 Cal.App.4th at p.899, In re Elkins, supra,  
13 144 Cal.App.4th at 489). As the Appellate Court in In re Caswell  
14 92 Cal.App.4th 1017, 1029, pointed out, there is always some  
15 evidence in the record of unsuitability of parole, which if  
16 invoked, would subject every consideration of parole to an  
17 arbitrary standard or political whim, but for a burden of proof,  
18 and the burden of producing evidence, is clearly in California  
19 law, e.g. People v. Dubon, 90 Cal.App.4th 949, 952, (2001), and  
20 applies to all state agencies.

21 Here, where the statute presumes that a parole date "shall  
22 normally" be set, the board must, in their weighing and  
23 balancing of all relevant, material and reliable evidence,  
24 present by a preponderance of that evidence, a "rational  
25 connection" between the basic facts the board is asserting as  
26 sufficient to deny parole, and the ultimate fact statutorily  
27 presumed, i.e., that the prisoner is more than likely not  
28 "suitable" for setting a parole release date.

1 Petitioner submits that the board and the governor have  
2 broad discretion in parole matter, but the requirement of  
3 procedural due process embodied in the California Constitution  
4 places some limitations upon these discretionary powers.

5 As heretofore shown, the board's burden of proof is the  
6 preponderance of relevant and material evidence standard. This  
7 is the "rock bottom" standard allowed by California law.  
8 (Evidence Code §115; see e.g. Charlton v. Federal Trade Comm.,  
9 543 F.2d, 903-907, 908, (D.C. Cir. 1976)(speaking to this  
10 standard as being "rock bottom" burden of proof). "Good Cause"  
11 is defined in the BPT's regulations as "a finding by the board  
12 based upon a preponderance of the (material and relevant)  
13 evidence that there is a factual basis and good reason for the  
14 decision made." (Ibid. 2000). Here, in petitioner's case, the  
15 board, based on the "material and relevant" evidence found  
16 petitioner unsuitable for parole on the basis of the commitment  
17 offense which petitioner has been denied two times base  
18 primarily on the same issues, i.e., unchanging factors. This is  
19 a clear due process violation and especially where the relevant  
20 and reliable evidence concerning public safety that was  
21 presented at petitioner's subsequent parole consideration  
22 hearings that show that petitioner does not pose an  
23 "unreasonable risk to the public if released at this time.

24 The mandatory language in §3041 of the Penal Code  
25 established a rebuttable presumption affecting the board's  
26 burden of producing evidence and the burden of proof  
27 implementing public policy regarding the parole of "term to  
28 life" prisoners.

1 Petitioner asserts that the ultimate facts sought is a  
2 determination whether the prisoner is currently in "unreasonable  
3 risk" of danger to the public safety if released on parole.  
4 (Subd. (b), Penal code §3041; 15 CCR. §2402(a)).

5 The presumption created by mandatory language in both  
6 subdivision (a) and (b) of P.C. §3041 is that the petitioner  
7 "shall normally" have a parole release date set "unless" the  
8 presumption is overcome by the board which carries the burden of  
9 proof as to the existence of the presumed fact. McQuillion v.  
10 Duncan, 306 F.3d, 901-902, (9th Cir. 2002): Biggs v. Terhune,  
11 334 F.3d 910, 916-917 (9th Cir. 2003)(regarding the presumption  
12 in Penal Code §3041). If the board cannot produce the evidence  
13 according to the burden of proof required, then the presumption  
14 stands, and the court is obliged to uphold the presumption, and  
15 under In re Smith, 109 Cal.App.4th 489 (2003), must order  
16 petitioner released from custody.

17 B. THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT  
18 PROHIBITS STATE ACTION THAT DEPRIVES A PERSON  
19 OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE  
PROCESS OF LAW.

20 The due process clause of the 14th Amendment prohibits  
21 state action that deprives a person of life, liberty, or  
22 property, without due process of law. A person alleging a due  
23 process violation must first demonstrate that he or she was  
24 deprived of liberty or property interest protected by the due  
25 process clause, and then show that the procedures that led to  
26 the deprivation were constitutionally insufficient. Kentucky  
27 Dept. of Corrections v. Thompson, 490 U.S. 454, 459-460 (1989);  
28 McQuillion v. Duncan, 306 F.3d, 895, 900 (9th Cir. 2002).

1       In the parole context, a prisoner alleging a due process  
2 claim must demonstrate the existence of a protected liberty  
3 interest in parole, and the denial of one or more of the  
4 procedural protections that must be afforded when a prisoner has  
5 a liberty interest in parole. The Supreme Court held in 1979,  
6 and reiterated in 1987, that "a state's statutory scheme, if it  
7 uses mandatory language, creates a presumption that parole  
8 release will be granted when or unless certain designated  
9 findings are made, and thereby gives rise to a constitutional  
10 liberty interest." McQuillion, supra, 306 F.3d, 16, 901 (citing  
11 Greenholtz v. Inmates of Nebraska Penal, 442 U.S. 1, 7 (1979)  
12 and Board of Pardon v. Allen, 482 U.S. 369, 373 (1987).

13       The Ninth Circuit has held that California's parole scheme  
14 creates a cognizable liberty interest in release on parole  
15 because Penal Code §3041 uses mandatory language and is similar  
16 to the Nebraska and Montana statutes addressed in Greenholtz and  
17 Allen, respectively. McQuillion, 306 F.3d 15, 901-902. As the  
18 Ninth Circuit has explained, "§3041 of the California Penal Code  
19 creates in every inmate a cognizable interest in parole which is  
20 protected by the procedural safeguards of the due process  
21 clause," and that interest arises "upon the incarceration of the  
22 inmate." Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir.  
23 2003).

24 **GROUND THREE:**

25       **THE BOARD VIOLATES DUE PROCESS BY REPEATEDLY**  
26       **RELYING ON THE UNCHANGING FACTS OF THE CRIME IN**  
27       **THE FACE OF CLEAR EVIDENCE OF REHABILITATION**  
28       **AND BY MAKING RECOMMENDATIONS OF WHAT TO DO TO**  
         **BE FOUND SUITABLE AT EACH HEARING. A FINDING OF**  
         **EGREGIOUSNESS IS BARRED BY THE INMATE'S**  
         **COMPLIANCE WITH THOSE AGREED TERMS.**

1       When the board repeatedly relies on the unchanging facts of  
2 the crime to deny parole, in the face of clear evidence that the  
3 inmate has been rehabilitated, due process is violated. Biggs v.  
4 Terhune, supra, at 915-916, Ramirez, supra, at 571). However,  
5 here, the board goes a step further. At the conclusion of each  
6 hearing attended by petitioner, the board gave him a series of  
7 what to do to be found suitable for parole. If the crime was  
8 going to continue to be an impediment to parole, then what  
9 difference would it make whether petitioner followed those  
10 recommendations, since parole would be denied in any event as  
11 the crime will never change? How could the board make those  
12 recommendations in good faith if the crime was such that parole  
13 was not going to occur no matter how well petitioner programs?  
14 Even worse, if he complies with those recommendations and the  
15 board gives him a parole date, if the governor is permitted to  
16 effectively negate this whole process unilaterally taking that  
17 parole date away, then the recommendations and compliances are  
18 rendered useless acts.

19       The board has a duty to make all recommendations  
20 "sufficiently clear" to inform petitioner what conduct will  
21 result in a grant of parole. (U.S. v. Guagliardo, 278 F.3d  
22 868-872, (9th Cir. 2002)[citing Graynet v. City of Rockford, 408  
23 U.S. 104, 108-109, (1972)]. "A prisoner's due process rights are  
24 violated if parole conditions are not made 'sufficiently clear'  
25 so as to inform him of what conduct will result in his being  
26 returned to prison. Likewise, the Board of Prison Terms has a  
27 duty to make recommendations for parole eligibility  
28 'sufficiently clear' so as to inform the inmate of conduct that

1 will warrant a finding of suitability." U.S. v. Guagliardo,  
2 supra, 278 F.3d 868. Thus, the onus is on the board to clearly  
3 and specifically stated what conduct will warrant a finding of  
4 suitability. Therefore, it follows that there is only one way to  
5 interpret the recommendations given to petitioner at the  
6 Documentation hearing and at each of the Subsequent parole  
7 hearings. They constitute the board's "sufficiently clear"  
8 instructions as to what petitioner must do to be found suitable.  
9 As stated, it is indisputable but that petitioner has complied  
10 with every single one of the board's directives to him, and  
11 thus, the board must finally find petitioner suitable for  
12 release. If the board's directions to the inmate are not  
13 acknowledged as sincere offers providing legitimate goals for  
14 achieving a status of parole suitability, then they are mere  
15 "hoops" designated to support elaborate ruse and a further  
16 affront to the due process rights of all prisoners who rely upon  
17 them.

18 As noted, petitioner sincerely relied upon the  
19 recommendations of the prior board panels, and he partook to  
20 fulfill each one. Petitioner's fulfillment may be recognized  
21 through his educational and vocational accomplishments and  
22 gains, his ongoing self-help work and his crime free behavior  
23 throughout his nearly 16 years of incarceration. Petitioner has  
24 complied with those directives following each and every hearing,  
25 and the board should finally recognize his compliance by  
26 granting parole.

27 A. CONTINUED RELIANCE ON THE UNCHANGING FACTS OF THE  
28 CRIME VIOLATES DUE PROCESS.

1       In Biggs v. Terhune, the 9th Circuit held that even if the  
2 commitment offense(s) are sufficient to support a denial of  
3 parole based upon considerations of due process. Biggs v.  
4 Terhune, supra, 334 F.3d at 916. The Ramirez court also  
5 acknowledged that there will always be "some evidence" to  
6 support a finding that a prisoner committed the underlying  
7 offense. Those facts alone, however, do not justify the denial  
8 of parole. Thus, while concluding that there was factual support  
9 for the findings as to the crime and priors, the Ramirez, court  
10 still found the board's decision arbitrary since there had been  
11 7 hearings at that point, 9 years had passed beyond the minimum  
12 term and it was 17 years after entering prison, and all evidence  
13 showed rehabilitation. (Id. at 571). Likewise, as the Biggs court  
14 more recently said, despite the fact that there may remain  
15 evidence to support a finding of egregiousness of the crime:

16       "A continued reliance in the future on an  
17 unchanging factor, the circumstances of the  
18 offense and conduct prior to imprisonment,  
19 runs contrary to the rehabilitative goals  
espoused by the prison system and could result  
in a due process violation." (Biggs, supra, at  
916-917).

20       In the published case of Irons v. Warden, 358 F.Supp.2d 936  
21 (E.D. Cal. 2005), the federal court found that the board  
22 violated the prisoner's due process by continuing to rely on the  
23 immutable factors. (e.g. the commitment offense and history  
24 prior to incarceration) to support the denial of parole. In  
25 doing so, the federal judge there ruled that continuing to rely  
26 on those factors that can never change, such as the commitment  
27 offense, or history prior to imprisonment, where there is no  
28 proof of continuing bad conduct to support a finding of current

1 threat to the public, offends due process.

2 In interpreting the rule set forth in Biggs, and the plain  
3 language of Penal Code §3041, it is clear that even if the crime  
4 may be considered ~~egregious~~, under federal due process  
5 principles, the denial of parole based on the immutable facts of  
6 the crime is only authorized at the first parole consideration  
7 hearing. The provisions of Penal Code §3041 only talk of the use  
8 of the crime to defer setting of a date at the initial hearing.  
9 (Penal Code §3041(a)). After that, to give the statute a  
10 constitutional interpretation that is not unreasonably vague,  
11 further denials would have to be based on some facts arising  
12 subsequent to the crime that show a continued propensity for  
13 violence, making the inmate a danger to the public. (Biggs v.  
14 Terhune, supra, 334 F.3d at 914-915). To rule otherwise would  
15 put petitioner in an impossible situation, where no matter what  
16 he shows in terms of positive behavior, reformation, self-help,  
17 work skills, parole plans, or just rehabilitation in general, he  
18 would never be able to overcome the unchanging facts of the  
19 crime. The only logical application of Constitutionaly Due  
20 Process dictates what the court in Irons held, i.e., that any  
21 subsequent denial requires the presence of some in-prison  
22 behavior showing that the inmate currently presents an  
23 unreasonable risk of danger if paroled.

24 Here, the facts of the crime have been used as the real  
25 reason for denying parole on 2 separate occasions, yet, those  
26 facts have never been tied to current behaviors showing  
27 petitioner still presents an unreasonable risk of danger to the  
28 public at this time. A rule requiring the presence of in-prison,

1 adverse behavior to justify further denial based on the crime,  
2 simply recognizes what the 9th Circuit in Biggs alluded to when  
3 it talked of the rehabilitative goals of the system, and, the  
4 need to take into consideration that a person can change. At  
5 this point, petitioner has been incarcerated for 16 years,  
6 eligible for parole for more than five of those years. His  
7 programming clearly shows his full rehabilitation. In drawing  
8 the line as to when further denials become arbitrary, it is  
9 obvious that the line has clearly been crossed in this case, and  
10 in fact, was crossed as soon as the crime was used in the second  
11 parole hearing without the presence of facts showing a continued  
12 risk of danger based on how petitioner was programming in  
13 prison. To the contrary, the in-prison facts are exclusively  
14 positive.

15 As the Ramirez court noted, the paroling authority must do  
16 more than merely commend petitioner for the hard work done to  
17 rehabilitate himself while in prison. They must actually  
18 consider these factors "as...circumstance[s] tending to show his  
19 suitability for parole." Ramirez, supra, 94 Cal.App.4th at  
20 571-572 [emphasis original]. Of course, all the board did with  
21 petitioner's extensive accomplishments was to brush them aside  
22 with several terse lines, and issue superficial compliments. The  
23 Biggs rule is clear that if an inmate continue[s] to demonstrate  
24 exemplary behavior and evidence of rehabilitation, denying him a  
25 parole date simply because of the nature of his offense and  
26 prior conduct would raise serious questions involving his  
27 liberty interest in parole. Biggs v. Terhune, supra, 334 F.3d at  
28 916. Here, the evidence of rehabilitation is beyond dispute.

1       In comparing the present case with Biggs, it is undeniably  
2 clear that the board lacks any justification whatsoever to  
3 continue to deny petitioner a parole date. In Biggs, the inmate  
4 was convicted of the premeditated and deliberate First Degree  
5 Murder of a witness in a major theft case against the  
6 defendants, and yet, the court was quick to caution the board  
7 that it could not continue to solely rely on the commitment  
8 offense to deny the inmate parole, even though it was only his  
9 initial hearing at that point. Yet, petitioner has been denied  
10 parole on 2 separate occasions, each time effectively relying  
11 virtually exclusively upon the unchanging facts of his  
12 commitment offense. The continued reliance upon the commitment  
13 offense is simply arbitrary, particularly in the fact of the  
14 board's acknowledgements of petitioner's model behavior in  
15 prison and extensive accomplishments, all of which are conceded  
16 by the statement of decision. Therefore, as the court states in  
17 Biggs, denying him a parole date simply because of the nature of  
18 the offense, not only raises serious questions involving his  
19 liberty interest in parole, but blatantly violates due process.  
20 (See Biggs v. Terhune, supra, 334 F.3d at 915-916; Iron,  
21 supra).

22       B. CONTINUED RELIANCE UPON FACTS OF THE CRIME VIOLATES  
23            DUE PROCESS.

24       First, continued reliance upon these unchanging factors  
25 makes a sham of California's parole system and amounts to an  
26 arbitrary denial of petitioner's "liberty interest in release on  
27 parole," and his "presumption that a parole release date will be  
28 granted." (See McQuillion v. Duncan, 306 F.3d 895, 902 (9th Cir.  
2002), Biggs, 334 F.3d at 9144-915, Rosenkrantz, 29 Cal.4th at

1 654, 661). Petitioner has been denied parole on <sup>two</sup> different  
 2 occasions. continued reliance upon these unchanging factors  
 3 amounts to converting petitioner's offense to a term of life  
 4 without the possibility of parole. (See Irons, 358 F.Supp.2d at  
 5 947 ["continuous reliance on the unchanging circumstances  
 6 transforms an offense into a de facto life imprisonment without  
 7 the possibility of parole"]; Scott, 34 Cal.Rptr.3d at 919-920,  
 8 133 Cal.App.4th at 594-595; Shaputis, 37 Cal.Rptr.3d at 335).  
 9 Second, the circumstances of the crime and petitioner's conduct  
 10 prior to imprisonment do not amount to some evidence supporting  
 11 the conclusion that petitioner "currently" (underline added)  
 12 poses an unreasonable risk of danger if released at this time."]  
 13 In re Shaputis, (2006) 37 Cal.Rptr.3d 324, 334-335). In the  
 14 parole context, the requirements of due process can only be met  
 15 if "some evidence" supports the decision and the evidence  
 16 underlying the decision is supported by "some indicia of  
 17 reliability." Biggs, 334 F.3d at 914; Caswell v. Calderon, 353  
 18 F.3d 832, 839 (9th Cir. 2004); Scott, 119 Cal.4th at 899;  
 19 Superintendent v. Hill, 472 U.S. 445, 455-457 (1985);  
 20 McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002).

21 Petitioner presents a stronger case than Biggs for several  
 22 reasons. First petitioner's commitment offense was less serious  
 23 than the petitioner in Biggs. The Biggs petitioner was involved  
 24 in a violent, manipulative and premeditated murder, the  
 25 petitioner here has a much lesser serious offense than  
 26 petitioner Biggs. Second, the Biggs petitioner had not yet  
 27 served the full terms of his sentence, while petitioner here has  
 28 exceeded his sentence by approximately nine years. Finally,

1 petitioner here has demonstrated exemplary behavior and evidence  
 2 of rehabilitation; as required by Biggs court, for a significant  
 3 period of time. Therefore, the sole reliance on petitioner's  
 4 commitment offense in denying him parole impinges on  
 5 petitioner's constitutional liberty interest in parole. (Martin  
 6 v. Marshall, supra, 431 F.Supp.2d at p.1047). (In re Lawrence,  
 7 (May 22, 2007), Cal.Rptr.3d WL1475283 (Cal.App.2d Dist.).

8 While it may have been reasonable to rely on petitioner's  
 9 offense and conduct prior to imprisonment as an indicator of  
 10 dangerousness for some period of time, continued reliance on  
 11 such unchanging circumstances after 16 years of incarceration  
 12 and two parole suitability hearings, violates due process  
 13 because these factors now lack predictive value with regards to  
 14 petitioner's present and future dangerousness. After 16 years  
 15 of rehabilitation in which petitioner's eligible parole date for  
 16 release was passed on October 10, 1999 , (Exhibit "E" , Initial  
 17 M.E.P.D.), the ability to predict petitioner's future  
 18 dangerousness based simply on the circumstances of the crime is  
 19 nil. (See Irons, 358 F.Supp.2d at 947 n.2 ["four prior times in  
 20 finding [Irons] unsuitable for parole" and "after 15 years" of  
 21 imprisonment, ability to assess dangerousness "is near zero."];  
 22 Scott, 133 Cal.App.4th at 595, 34 Cal.Rptr.3d at 919-920 ["the  
 23 predictive value of the commitment offense may be very  
 24 questionable after a long period of time."].

25 Petitioner's record is replete with evidence of  
 26 petitioner's rehabilitation, which was expressed by the board,  
 27 including Psychological Reports, Correctional Counselor's  
 28 Reports, extensive self-improvement through vocational,

1 educational, self-help therapy and disciplinary free  
2 incarceration for the past 16 years. (See Exhibit "E").

3 While the board may initially have been entitled to rely  
4 upon the commitment offense and petitioner's conduct prior to  
5 imprisonment to find petitioner unsuitable for parole, under  
6 these circumstances, petitioner submits that the continued  
7 reliance and sole reliance of the convicted offense do not now  
8 constitute "some evidence" with "some indicia of reliability" of  
9 petitioner's current dangerousness. (See Hill, 472 U.S. at 445;  
10 Biggs, 334 F.3d at 917; Irons, 358 F.Supp.2d at 947; Masoner,  
11 2004 WL1090188 \*1-2; Bair, 2005 WL2219220, \*12 n.3; Scott, 133  
12 Cal.App.4th at 594-595, 34 Cal.Rptr.3d at 919-920; Rosenkrantz,  
13 2002 29 Cal.4th 616, 665; Dannenberg, (2005) 34 Cal.4th 1061,  
14 1100; In re Lee, (2006) 143 Cal.App.4th 1400, 1408; In re  
15 Lawrence, (2007) Cal.Rptr.3d WL1475283; In re Barker, (2007)  
16 DJDAR 7548).

17 C. JUDICIAL OVERSIGHT IS CRITICAL TO SAFEGUARD THE  
18 UNDERLYING PURPOSE OF CALIFORNIA'S PAROLE SYSTEM  
19 AND THE LIBERTY INTERESTS OF INMATES. THE  
ESSENCE OF THE PAROLE SYSTEM IS THE RE-ENTRY OF  
PRISONERS WHO NO LONGER POSE A PUBLIC THREAT.

20 Parole, the release of the imprisoned before they have  
21 served the maximum time set by their sentence, has long been  
22 part of the California penal system. The Indeterminate  
23 Sentencing Law, requiring the trial judge to set a minimum but  
24 not a maximum sentence was enacted in 1971. In re Minnis, (1972)  
25 7 Cal.3d 639, 643, n.2 ("the court in imposing the sentence  
26 shall not fix the term or duration of the period of  
27 imprisonment") (citation and internal quotations omitted). The  
28 goal of indeterminate sentences and the California parole system

1 is not only to punish but also to provide for reformation and  
2 rehabilitation:

3 "The belief no longer prevails that every  
4 offense in a like legal category calls for an  
5 identical punishment without regard to the  
6 past life and habits of a particular offender  
7 ... retribution is no longer the dominant  
8 objective of the criminal law. Reformation and  
9 rehabilitation of offenders have become  
10 important goals of criminal jurisprudence."

11 People v. Morse, (1964) 60 Cal.2d 631, 643, n.8 (quoting

12 Williams v. State of New York, (1949) 337 U.S. 241, 247). In a  
13 lengthy discussion of this topic, the California Supreme Court  
14 states as follows:

15 [T]he purpose of the indeterminate sentence  
16 law, like other modern laws in relation to the  
17 administration of the criminal law, is to  
18 mitigate the punishment which would otherwise  
19 be imposed upon the offender. These laws place  
20 emphasis upon the reformation of the offender.  
21 They seek to make the punishment fit the  
22 criminal rather than the the crime. The  
23 endeavor to put before the prisoner great  
24 incentive to well-doing, in order that his  
25 will to do well would be strengthened and  
26 confirmed by the habit of well-doing.

27 [...]

28 [T]he interests of society require that under  
29 prison discipline every effort should be made  
30 to produce a reformation of the prisoner ...  
31 The Legislative policy [was to provide a  
32 system whereby] a hope was to be held out to  
33 prisoners that through good conduct in prison  
34 and a disposition shown toward reformation,  
35 they might be permitted a conditional liberty  
36 upon restraint under which they might be  
37 restored again to society...

38 [...]

39 Although good conduct while incarcerated and  
40 potential for reform are not the only relevant  
41 factors, the court has acknowledged their  
42 significance. Furthermore, authority has  
43 declared that these factors are among those of  
44 "paramount importance."

45 In re Minnis, Cal.3d at 644-645. The Rosenkrantz court, citing

1 Minnis, reaffirmed the principles. "[E]ven before factors  
2 relevant to parole decisions had been set forth expressly by  
3 state statute and by regulations, we concluded that [a]ny  
4 official or board with discretion, is under obligation to  
5 consider all relevant factors [citations], and the [official or  
6 board] cannot, consistently with its obligation, ignore post  
7 conviction factors unless directed to do so by Legislature." In  
8 re Rosenkrantz, (2002) 29 Cal.4th 515, 656 (quoting Minnis, 7  
9 Cal.3d at 645).

10 D. PRISONERS HAVE A CONSTITUTIONAL LIBERTY INTEREST  
11 IN PAROLE DECISIONS.

12 "[P]arole applicants in California have an expectation that  
13 they will granted parole unless the board finds, in the exercise  
14 of its discretion, that they are unsuitable for parole in light  
15 of the circumstances specified by statute and by regulation."  
16 Rosenkrantz, 29 Cal.4th at 659-61 (holding that the California  
17 Constitution, Article V, §8(b) and the California Penal Code  
18 §3041, "give rise to a protected liberty interest in that "a  
19 prisoner granted parole by the board has an expectation that the  
20 governor's decision to affirm, modify, or reverse, the board's  
21 determination will be based upon the same factors the board is  
22 required to consider," and that "liberty interest underlying a  
23 governor's parole review decision is protected by due process of  
24 law.").

25 Federal courts have also unequivically held that  
26 California's parole system gives rise to a liberty interest  
27 constitutionally protected by due process. (See Board of Pardons  
28 v. Allen, (1987) 482 U.S. 369, 376-78; Greenholtz v. Inmates of  
Neb. Penal & Correctional Complex, (1979) 442 U.S. 1, 11-12,

1 (holding a state's statutory parole scheme that uses mandatory  
2 language may create a presumption that parole release will be  
3 granted upon certain circumstances or findings, thus giving rise  
4 to a constitutionally protected liberty interest); McQuillion v.  
5 Duncan, (9th Cir. 2002) 306 F.3d 896, 902-903, n.1, 903 (holding  
6 that because California's parole scheme uses mandatory language  
7 and is largely parallel to the schemes found in Allen and  
8 Greenholtz, that give rise to a protected liberty interest in  
9 release on parole, "California's parole scheme gives rise to a  
10 cognizable liberty interest in release on parole"). Biggs v.  
11 Terhune, (9th Cir. 2003) 334 F.3d 910, 915-916.

12 E. STANDARD OF REVIEW REQUIRES AN EVIDENTIARY HEARING.

13 On habeas corpus, a petitioner is entitled to an  
14 evidentiary hearing where the petitioner has established a  
15 "colorable" claim for relief and where the petitioner has never  
16 been accorded a state or federal hearing on his claim. Earp v.  
17 Oronski, (9th Cir. 2003) 372 U.S. 293 (1963) and Keeney v.  
18 Tamaya-Reyes, 504 U.S. 1, 5 (1992). In stating a "colorable"  
19 claim, a petitioner is merely required to allege specific facts  
20 which, if true, would entitle him to relief. (Ibid.). Granted,  
21 under AEDPA, a federal court is not required to order a hearing  
22 where petitioner failed to develop the facts in state court. In  
23 such cases, the federal court accords a presumption of  
24 correctness to the facts found by the state court and need not  
25 hold an evidentiary hearing, unless those facts are rebutted by  
26 clear and convincing evidence. On the other hand, no deference  
27 is due where state had made an unreasonable determination of the  
28 facts and where a state court makes evidentiary finding without

1 holding a hearing and giving petitioner an opportunity to  
2 present evidence. Such findings clearly result in an  
3 "unreasonable determination" of the facts. Taylor v. Maddox,  
4 (9th Cir. 2004) 336 F.3d 992, 1001.

5 In summation, an evidentiary hearing is required under the  
6 AEDPA and the Appellate court will remand for a hearing if the  
7 District Court rules without granting one, "where petitioner  
8 establishes a colorable claim for relief and has never been  
9 accorded a state or federal hearing on his claim." Earp, supra,  
10 at 1167.

11 Here, petitioner requests an evidentiary hearing at every  
12 level of the state's habeas proceedings and each of the court's  
13 to which he appealed who rule without granting him an evidentiary  
14 hearing. As a result, (1) petitioner is entitled to an  
15 evidentiary hearing in this court before the court can make any  
16 credibility determination of the facts alleged in the petition  
17 and supporting exhibits; (2) any contrived facts found by the  
18 state court while denying a request for an evidentiary hearing  
19 necessarily resulting from an "unreasonable determination" of  
20 the facts and hence are not entitled to any presumption of  
21 correctness. (Earp, supra, at 1167; Taylor, supra, at  
22 1101) ["when state court's legal error infects the fact finding  
23 process, thus resulting in factual determinations will be  
24 unreasonable and no presumption of correctness can attach to  
25 it"].

26

27

28

## CONCLUSION

2 All criminal convictions represent the basest form of human  
3 behavior. Our laws however, provide mechanisms by which even  
4 some murderers are entitled to be paroled. The judiciary has an  
5 obligation to faithfully execute those laws. The record  
6 establishes that petitioner does not pose an unreasonable risk  
7 to public safety. Any contrary conclusion lacks any evidentiary  
8 support. As the record is void of any evidence to substantiate a  
9 claim of "present danger" and allows only for a contrary  
10 conclusion, it (justice) can only be served by an order from  
11 this court directing an evidentiary hearing; and because there  
12 is nothing which, either singly or in conjunction with other  
13 evidence that could support any decision other than parole  
14 suitable, the board's decision should be vacated; the petition  
15 issued; the petitioner remanded back to the board with  
16 directions to find petitioner suitable; set a parole release  
17 date within 30 days; and/or petitioner ordered released. Only in  
18 this way can the liberty interest petitioner continues to be  
19 denied be restored.

20 //

21 | //

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### PRAYER FOR RELIEF

Petitioner is without remedy save for Habeas Corpus.

3 Accordingly, petitioner requests that the court:

1. Issue a Writ of Habeas Corpus granting petitioner's Due Process violation claims;
2. Issue an Order to Show Cause;
3. Declare the rights of petitioner;
4. Appoint counsel to represent petitioner;
5. Issue an Order directing an Evidentiary Hearing;
6. Issue an Order releasing petitioner based on supporting evidence;
7. Grant any and all relief found necessary or appropriate.

Dated this 10th day of January , 2008.

Respectfully submitted,

Roderic Opalec

Petitioner in Pro Per

111

111

# **EXHIBIT “A”**

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

**INMATE  
COPY**

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: ) CDC Number H-33214  
RODERIC OPALEC )  
\_\_\_\_\_)

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

JULY 12, 2006

PANEL PRESENT:

Mr. James Davis, Presiding Commissioner  
Mr. Dennis Smith, Deputy Commissioner

OTHERS PRESENT:

Mr. Roderic Opalec, Inmate  
Ms. Katera E. Rutledge, Attorney for Inmate  
Mr. Paul Turley, Deputy District Attorney  
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

\_\_\_\_\_  
\_\_\_\_\_  
No              See Review of Hearing  
Yes              Transcript Memorandum

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## PROCEEDINGS

2 DEPUTY COMMISSIONER SMITH: We're on the record.

3 PRESIDING COMMISSIONER DAVIS: This is a

4 Subsequent Parole Consideration Hearing for Roderic  
5 Opalec. Is that correct?

7 PRESIDING COMMISSIONER DAVIS: Opalec?

8                   **INMATE OPALEC:** Yes.

9 PRESIDING COMMISSIONER DAVIS: Opalec. Okay.

10 CDC number H-33214. Today's date is July 12<sup>th</sup>, 2006.  
11 We are located at Correctional Training Facility. The  
12 inmate was received on May 1<sup>st</sup>, 1992 from Los Angeles  
13 County. The life term began on October 10<sup>th</sup>, 1992. The  
14 minimum eligible parole date was October 10<sup>th</sup>, 1999. The  
15 controlling offense for which the inmate was committed  
16 is murder -- is attempted murder with a firearm case  
17 number TA009295. Count one Penal Code Section  
18 6645/187/12022.5. The inmate received a term of seven  
19 years to life plus three. This hearing is being tape  
20 recorded and for the purposes of voice identification,  
21 we will each state our first and last name, spelling  
22 our last name. And when it reaches you Mr. Opalec is  
23 you will also give us your CDC please. I will start  
24 and move to my left. James Davis D-A-V-I-S.

25 DEPUTY COMMISSIONER SMITH: Dennis Smith S-M-I-  
26 T-H, Deputy Commissioner.

27 DEPUTY DISTRICT ATTORNEY TURLEY: Paul Turley T-

1 U-R-L-E-Y, Deputy DA Los Angeles County.

2 **ATTORNEY RUTLEDGE:** Katera E. Rutledge R-U-T-L-  
3 E-D-G-E, Attorney for Mr. Opalec.

4 **INMATE OPALEC:** Roderic Opalec O-P-A-L-E-C, H-  
5 33214.

6 **PRESIDING COMMISSIONER DAVIS:** All right. Mr.  
7 Opalec in front of you is a laminated piece of paper.  
8 Would you read the contents of that please aloud?

9 **INMATE OPALEC:** "The Americans with  
10 Disabilities Act. The Americans with  
11 Disabilities Act is a law to help people with  
12 disabilities. Disabilities are problems that  
13 make it harder for some people to see, hear,  
14 breathe, talk, walk, learn, think, work or take  
15 care of themselves than it is for others. No  
16 one can be kept out of public places or  
17 activities because of disabilities. If you have  
18 a disability, you have the right to ask for help  
19 to get ready for your BPT Hearing, get to the  
20 hearing, talk, read forms and papers and  
21 understand the hearing process. BPT will look  
22 at what you ask for to make sure that you have a  
23 disability that is covered by the ADA and that  
24 you have asked for the right kind of help. If  
25 you do not get help or is you don't think you  
26 got the kind of help you need ask for a BPT 1074  
27 Grievance form. You can also get help filling

1                   it out."

2                   **PRESIDING COMMISSIONER DAVIS:** Well thank you.

3                   And according to our records on September 8<sup>th</sup>, 2005,  
4                   together with staff at the institution, you reviewed  
5                   and signed the BPT form 1073 indicating that you do not  
6                   have any disabilities that would qualify under the  
7                   Americans with Disabilities Act. Is that correct sir?

8                   **INMATE OPALEC:** That's correct.

9                   **PRESIDING COMMISSIONER DAVIS:** All right. You  
10                  were able to read that without glasses today.

11                  **INMATE OPALEC:** Yes.

12                  **PRESIDING COMMISSIONER DAVIS:** Do you normally  
13                  wear glasses?

14                  **INMATE OPALEC:** No I don't.

15                  **PRESIDING COMMISSIONER DAVIS:** Good for you.  
16                  Can you hear me all right?

17                  **INMATE OPALEC:** Yes sir.

18                  **PRESIDING COMMISSIONER DAVIS:** And you walked  
19                  here today under your own steam.

20                  **INMATE OPALEC:** Yes I did.

21                  **PRESIDING COMMISSIONER DAVIS:** Healthy and ready  
22                  to go.

23                  **INMATE OPALEC:** Yes sir.

24                  **PRESIDING COMMISSIONER DAVIS:** Good. All right.  
25                  I notice that you also have a GED. And nothing would  
26                  indicate that you -- or anything that would -- or is  
27                  there anything that would preclude you from actively

1 participating in this hearing today?

2 **INMATE OPALC:** That's correct.

3 **PRESIDING COMMISSIONER DAVIS:** There is nothing  
4 that would do that right?

5 **INMATE OPALC:** No.

6 **PRESIDING COMMISSIONER DAVIS:** Okay. Good. All  
7 right. Counsel, you're also satisfied with that?

8 **ATTORNEY RUTLEDGE:** Yes.

9 **PRESIDING COMMISSIONER DAVIS:** This hearing is  
10 being conducted pursuant to Penal Code Sections 3041  
11 and 3042 and the rules and regulations of the Board of  
12 Prison Terms governing parole consideration hearings  
13 for life inmates. The purpose of today's hearing is to  
14 once again consider the number and nature of the crimes  
15 for which you were committed, your prior criminal and  
16 social history, and your behavior in programming since  
17 your commitment. We've had the opportunity to review  
18 your Central File and your prior transcripts and you  
19 will be given an opportunity to correct or clarify the  
20 record as we proceed. We will reach a decision today  
21 and inform you whether or not we find you suitable for  
22 parole and the reasons for our decision. If you are  
23 found suitable for parole, the length of your  
24 confinement will be explained to you. Nothing that  
25 happens here today will change the findings of the  
26 court. The panel is not here to retry your case. The  
27 panel is here for the sole purpose of determining your

1 suitability for parole. Do you understand that sir?

2 **INMATE OPALEC:** Yes.

3 **PRESIDING COMMISSIONER DAVIS:** This hearing will  
4 be conducted in two phases. First I will discuss with  
5 you the crimes for which you were committed as well as  
6 your prior criminal and social history. Commissioner  
7 Smith will go through your progress since your  
8 commitment, your counselors report and your  
9 psychological evaluation as well as your parole plans  
10 and any letters of support or opposition as they may  
11 exist. Once that's concluded, the commissioners, the  
12 district attorney and then your attorney will have the  
13 opportunity to ask you questions. Questions that come  
14 from the district attorney will be asked through the  
15 chair and then you will respond back to the panel with  
16 your answer. Next the district attorney and then your  
17 attorney and then finally you will be given an  
18 opportunity to make a final statement. Your statement  
19 should focus on why you believe that you are suitable  
20 for parole. The California Code of Regulations states  
21 that regardless of time served a life inmate shall be  
22 found unsuitable for and denied parole if in the  
23 judgment of the panel the inmate would pose an  
24 unreasonable risk of danger to society if released from  
25 prison. You have certain rights. Those rights include  
26 the right to a timely notice of the hearing, the right  
27 to review your Central File and the right to present

1 relative documents. Counsel, are you satisfied that  
2 your client's rights have been met to date?

3 **ATTORNEY RUTLEDGE:** Yes sir.

4 **PRESIDING COMMISSIONER DAVIS:** And you have an  
5 additional right to be heard by an impartial panel.  
6 Now you've heard Commissioner Smith and I introduce  
7 ourselves today. Do you have any reason to believe  
8 that we would not be impartial?

9 **INMATE OPALEC:** No.

10 **PRESIDING COMMISSIONER DAVIS:** Thank you. You  
11 will receive a written copy of our tentative decision  
12 today. That decision becomes effective within 120  
13 days. A copy of the decision and a copy of the  
14 transcript will be sent to you and you will have 90  
15 days from that date to appeal if you so desire. You  
16 are not required to admit your offense or discuss your  
17 offense. However, the panel does accept the findings  
18 of the court to be true. Do you understand that sir?

19 **INMATE OPALEC:** Yes.

20 **PRESIDING COMMISSIONER DAVIS:** The board has  
21 eliminated it's appeal process. If you disagree with  
22 anything in today's hearing you have the right to go  
23 directly to court with your complaint. Commissioner  
24 Smith will we be dealing with anything from the  
25 confidential file today?

26 **DEPUTY COMMISSIONER SMITH:** Not this afternoon,  
27 no.

1                   **PRESIDING COMMISSIONER DAVIS:** And I am going to  
2 pass this checklist of documents to both counsels.  
3 Please take a look at that to make sure that we are all  
4 operating off the same list of documents.

5                   **DEPUTY DISTRICT ATTORNEY TURLEY:** I have these  
6 documents. I also, in my file I want to note that  
7 there is a current board report addendum that was  
8 ordered June 8<sup>th</sup>, 06 but I don't believe I have that.

9                   **DEPUTY COMMISSIONER SMITH:** That is -- we have  
10 not received that.

11                  **DEPUTY DISTRICT ATTORNEY TURLEY:** Okay. Thank  
12 you.

13                  **PRESIDING COMMISSIONER DAVIS:** Counsel you also  
14 have these.

15                  **ATTORNEY RUTLEDGE:** Yes sir. We have all the  
16 documents.

17                  **PRESIDING COMMISSIONER DAVIS:** All right. That  
18 we'll mark Exhibit 1 then.

19                  **DEPUTY COMMISSIONER SMITH:** Just to further  
20 note, the board report dated January 06' is the board  
21 document that we'll be referring to.

22                  **DEPUTY DISTRICT ATTORNEY TURLEY:** Thank you.

23                  **PRESIDING COMMISSIONER DAVIS:** Counsel, any  
24 preliminary objections?

25                  **ATTORNEY RUTLEDGE:** No. We would just note that  
26 the board report has not been updated and I would like  
27 to ask the board what they plan to rely upon for as far

1 as what inmate's been doing since January.

2                   **DEPUTY COMMISSIONER SMITH:** The information in  
3 the C File.

4                   **ATTORNEY RUTLEDGE:** Okay. So you'll update us  
5 all the stuff that's in the C File since January.

6 Okay. No objections.

7                   **PRESIDING COMMISSIONER DAVIS:** All right. You  
8 have any additional documents you'd like us to consider  
9 today.

10                  **ATTORNEY RUTLEDGE:** No sir. We've submitted two  
11 letters, two parole and support letters.

12                  **PRESIDING COMMISSIONER DAVIS:** All right. And  
13 will your client be speaking with us today?

14                  **ATTORNEY RUTLEDGE:** He will speak on everything  
15 except the commitment offense.

16                  **PRESIDING COMMISSIONER DAVIS:** All right. For  
17 all other matters will you please raise your right hand  
18 sir? Do you solemnly swear or affirm the testimony you  
19 will give at the hearing will be the truth and nothing  
20 but the truth?

21                  **INMATE OPALEC:** Yes I do.

22                  **PRESIDING COMMISSIONER DAVIS:** For a summary of  
23 the crime I will refer to the January 2006 board report  
24 on page one, item one where it says summary of crime.  
25 Where it states on 9/24/90 Opalec along with co-  
26 defendants Cayamanda --

27                  **INMATE OPALEC:** Cayamanda.

1                   **PRESIDING COMMISSIONER DAVIS:** Cayamanda C-A-Y-  
2   A-M-A-N-D-A, Simangun --

3                   **INMATE OPALEC:** Simangun.

4                   **PRESIDING COMMISSIONER DAVIS:** Simangun S-I-M-A-  
5   N-G-U-N, and Fontilea --

6                   **INMATE OPALEC:** Fontilea.

7                   **PRESIDING COMMISSIONER DAVIS:** Fontilea F-O-N-T-  
8   I-L-E-A, Obrique O-B-R-I-Q-U-E and Bato B-A-T-O, all of  
9   whom were members of the Long Beach Local Boys agreed  
10   to retaliate against members of the Scott Loyal  
11   Brothers Gang (phonetic). The group split up into two  
12   vehicles and drove to Carson California. Two members  
13   of the Scott Loyal Brothers were fired upon at 23421  
14   South Main Street in Carson California. I will note  
15   for the record the board report says Carson City but  
16   it's our consensus that it's probably Carson California  
17   versus Carson City California. The two victims were  
18   not killed in the drive by attack and one of the  
19   victim's sustained injury. And then go back to the  
20   evaluation report done on 7/21/92 for some  
21   clarification. Where it states on page two, the  
22   essence of the committing offense is that he, referring  
23   to the inmate was -- and other members of the Long  
24   Beach Boys Gang discussed agreed to shoot members of  
25   the Scott Loyal Brothers Gang. Subsequently they shot  
26   at members of the rival gang and struck the victim  
27   Emery Curmen C-U-R-M-E-N. The inmate was apprehended

1 as a result of the investigation. And counsel, as  
2 always if your client would like to address anything  
3 about the commitment offense he is certainly welcome to  
4 do so. However, we understand and respect that he has  
5 an absolute right not to do that.

6 **ATTORNEY RUTLEDGE:** Thank you.

7 **PRESIDING COMMISSIONER DAVIS:** As to your  
8 personal history, you -- Mr. Opalec, you are the only  
9 child -- you are an only child. You came to the United  
10 States in 1987 from the Philippines. And if I misstate  
11 something or if something is incorrect please me.

12 Okay.

13 **INMATE OPALEC:** Okay.

14 **PRESIDING COMMISSIONER DAVIS:** We want to make  
15 sure we get the record correct. You had been living  
16 with your grandparents in the United States and you  
17 resided with your mother and stepfather who both worked  
18 as custodians for the Long Beach Unified School  
19 District at the time of your arrest.

20 **INMATE OPALEC:** Yes.

21 **PRESIDING COMMISSIONER DAVIS:** How old were you  
22 at the time you were arrested?

23 **INMATE OPALEC:** Twenty years old.

24 **PRESIDING COMMISSIONER DAVIS:** Twenty?

25 **INMATE OPALEC:** Yes.

26 **PRESIDING COMMISSIONER DAVIS:** No other family  
27 members are noted as having any trouble with the law.

1 You completed the tenth grade in the Philippines.

2 **INMATE OPALEC:** That's correct.

3 **PRESIDING COMMISSIONER DAVIS:** And completed six  
4 months of electrical training course at the Edison  
5 Technology College in Carson California. You were laid  
6 off for two months prior to the instant offense. Where  
7 were you working?

8 **INMATE OPALEC:** At Robinson Helicopter Company.

9 **PRESIDING COMMISSIONER DAVIS:** And what were you  
10 doing for them?

11 **INMATE OPALEC:** I was doing some electrical  
12 work, doing harness installation.

13 **PRESIDING COMMISSIONER DAVIS:** Did you complete  
14 any sort of certification during your six months at the  
15 Edison technician course?

16 **INMATE OPALEC:** I didn't get to finish it.

17 **PRESIDING COMMISSIONER DAVIS:** So you were  
18 working at the Helicopter Company just with the skills  
19 that you'd obtained.

20 **INMATE OPALEC:** I had a prior experience in  
21 electrics, that's why I was hired, Robinson.

22 **PRESIDING COMMISSIONER DAVIS:** What kind of  
23 prior experience did you have in electronics?

24 **INMATE OPALEC:** Assembly, electrical assembly.  
25 My first job was in Compton at Magnaspec (phonetic),  
26 that's the company's name.

27 **PRESIDING COMMISSIONER DAVIS:** What were you

1 doing for them?

2           **INMATE OPALEC:** I was doing electrical assembly  
3 work.

4           **PRESIDING COMMISSIONER DAVIS:** So what kind of -  
5 - what were you assembling?

6           **INMATE OPALEC:** Component parts for rockets and  
7 stuff and avionics, component parts.

8           **PRESIDING COMMISSIONER DAVIS:** Does that require  
9 any sort of a clearance on your part or drug testing or  
10 anything like that?

11          **INMATE OPALEC:** I didn't know at the time -- I  
12 think we had -- it didn't require no clearance but drug  
13 testing they surely did.

14          **PRESIDING COMMISSIONER DAVIS:** As part of your  
15 agreement to work there you had to drug test from time  
16 to time.

17          **INMATE OPALEC:** Yes.

18          **PRESIDING COMMISSIONER DAVIS:** Was it random?

19          **INMATE OPALEC:** Random, randomly.

20          **PRESIDING COMMISSIONER DAVIS:** You were never  
21 married and have no children. Prior drug use it says  
22 consists of marijuana and cocaine. How often would you  
23 use marijuana and or cocaine?

24          **INMATE OPALEC:** I used it about three times a  
25 week.

26          **PRESIDING COMMISSIONER DAVIS:** Which one or  
27 both?

1           **INMATE OPALEC:** Both.

2           **PRESIDING COMMISSIONER DAVIS:** Both?

3           **INMATE OPALEC:** Yeah.

4           **PRESIDING COMMISSIONER DAVIS:** Okay. On the  
5 weekends, primarily or when would you do it?

6           **INMATE OPALEC:** Primarily on the weekends when  
7 I'm hanging out with some friends.

8           **PRESIDING COMMISSIONER DAVIS:** Was this during  
9 the time you were employed for the electronic assembly  
10 program prior going to the helicopter company?

11           **INMATE OPALEC:** Yeah prior to that.

12           **PRESIDING COMMISSIONER DAVIS:** We're you  
13 concerned with them showing a negative test or a  
14 positive test I guess.

15           **INMATE OPALEC:** Well I didn't thought about that  
16 at the time.

17           **PRESIDING COMMISSIONER DAVIS:** Your gang  
18 affiliation is noted as Long Beach Shualas S-H-U-A-L-A-  
19 S.

20           **INMATE OPALEC:** Yes.

21           **PRESIDING COMMISSIONER DAVIS:** Is that right?

22           **INMATE OPALEC:** Yeah.

23           **PRESIDING COMMISSIONER DAVIS:** And you have aka  
24 of Spade S-P-A-D-E.

25           **INMATE OPALEC:** Yes, that's correct.

26           **PRESIDING COMMISSIONER DAVIS:** How did you get  
27 the nickname?

1                   **INMATE OPALEC:** That was just given to me when I  
2    got initiated.

3                   **PRESIDING COMMISSIONER DAVIS:** Now when you say  
4    initiated what do you mean?

5                   **INMATE OPALEC:** Well you know, it's just a thing  
6    that every gang goes to and they bring you in and they  
7    beat you up for like ten seconds and stuff.

8                   **PRESIDING COMMISSIONER DAVIS:** What we would  
9    generally call of jumping in process.

10                  **INMATE OPALEC:** Yes.

11                  **PRESIDING COMMISSIONER DAVIS:** So you were  
12    jumped into the gang?

13                  **INMATE OPALEC:** Yes.

14                  **PRESIDING COMMISSIONER DAVIS:** And you have had  
15    no prior criminal record prior to the instant offense.

16                  **INMATE OPALEC:** That's correct.

17                  **PRESIDING COMMISSIONER DAVIS:** So you were never  
18    arrested for anything?

19                  **INMATE OPALEC:** I was arrested for burglary but  
20    the charges was dropped by the district attorney.

21                  **PRESIDING COMMISSIONER DAVIS:** Okay. And it  
22    does reflect that in here as well. That you have no  
23    juvenile record but there was an arrest for burglary  
24    but the case was rejected by the district attorney. So  
25    you were living with your parents. Your home life  
26    generally good?

27                  **INMATE OPALEC:** Yes.

1                   **PRESIDING COMMISSIONER DAVIS:** No particular  
2 problems.

3                   **INMATE OPALEC:** No, I didn't have no problem.

4                   **PRESIDING COMMISSIONER DAVIS:** Sounds like you  
5 didn't have any problem getting a job. You had two of  
6 them. Now your first job, what happened with that one?

7                   **INMATE OPALEC:** I quit on that one to get the  
8 helicopter company job.

9                   **PRESIDING COMMISSIONER DAVIS:** So you took a  
10 better job?

11                  **INMATE OPALEC:** Yes.

12                  **PRESIDING COMMISSIONER DAVIS:** Good for you.  
13 And then the helicopter company just began to  
14 experience less work or something and didn't need you  
15 anymore?

16                  **INMATE OPALEC:** Yeah, it was, they slowed down.

17                  **PRESIDING COMMISSIONER DAVIS:** All of the things  
18 were normal; you got along with your mother and  
19 stepfather?

20                  **INMATE OPALEC:** Yes.

21                  **PRESIDING COMMISSIONER DAVIS:** Did they know  
22 that you were involved with gangs?

23                  **INMATE OPALEC:** Not at the time.

24                  **PRESIDING COMMISSIONER DAVIS:** When did they  
25 find out?

26                  **INMATE OPALEC:** When I got arrested.

27                  **PRESIDING COMMISSIONER DAVIS:** Did you tell them

1 or did they just learn that as a result of the arrest?

2 **INMATE OPALEC:** I told my mother what I was --  
3 got myself involved.

4 **PRESIDING COMMISSIONER DAVIS:** That must have  
5 been difficult.

6 **INMATE OPALEC:** Yes it was.

7 **PRESIDING COMMISSIONER DAVIS:** Tattoos or  
8 anything like that are associated with gangs?

9 **INMATE OPALEC:** I got this one cross and that's  
10 my only tattoo.

11 **PRESIDING COMMISSIONER DAVIS:** Did all of you  
12 have -- or was that associated with gang though or was  
13 that just a tattoo?

14 **INMATE OPALEC:** No, it's just a tattoo.

15 **PRESIDING COMMISSIONER DAVIS:** Just a tattoo.

16 You continue your gang activity since you've been in  
17 custody?

18 **INMATE OPALEC:** No, no.

19 **PRESIDING COMMISSIONER DAVIS:** How have you  
20 managed to separate yourself from gangs?

21 **INMATE OPALEC:** It's just that I didn't want to  
22 do it anymore you know. It's not -- I'm not getting  
23 anything out of it. I really found out when I got  
24 arrested who my really -- my really friends are. You  
25 just -- gangs is just something I did when I was young  
26 and I didn't want to do it -- I didn't want to have  
27 anything to do with it anymore.

1                   **PRESIDING COMMISSIONER DAVIS:** By young you mean  
2 up until your instant offense.

3                   **INMATE OPALEC:** Yes.

4                   **PRESIDING COMMISSIONER DAVIS:** Okay. How long  
5 had you been involved with the gangs prior to being  
6 arrested?

7                   **INMATE OPALEC:** Let's see, about -- I would say  
8 about two years.

9                   **PRESIDING COMMISSIONER DAVIS:** About two years.

10                  **INMATE OPALEC:** Yes.

11                  **PRESIDING COMMISSIONER DAVIS:** And is why you're  
12 saying that you have said that you did not continue  
13 with any gang associates when you came to prison.

14                  **INMATE OPALEC:** That's correct.

15                  **PRESIDING COMMISSIONER DAVIS:** No affiliation  
16 with any other gang members?

17                  **INMATE OPALEC:** Well there's gang members over  
18 here but I don't really hang around with gangs and I  
19 don't participate in gang activity. I just don't do it  
20 anymore. I don't deal with gangs.

21                  **PRESIDING COMMISSIONER DAVIS:** Is that difficult  
22 for you when you came in or was there any pressure for  
23 you to become involved in any gang activity?

24                  **INMATE OPALEC:** The pressure is always going to  
25 be there but you just have to meet to resist that. And  
26 I think I've done a good job of resisting.

27                  **PRESIDING COMMISSIONER DAVIS:** And when did you

1 make that decision to do that?

2                   **INMATE OPALEC:** When I seen that my life is  
3 going to have no meaning if I continue to do what I was  
4 doing. You know, if you're in a gang, the thing is  
5 there is only prison, you end up in prison or dying and  
6 I don't want to be that way. I don't want to end up  
7 like that.

8                   **PRESIDING COMMISSIONER DAVIS:** Can you give me  
9 roughly, was that when you first came to prison or was  
10 it a year or so afterwards? When did you make that  
11 decision?

12                  **INMATE OPALEC:** When it -- okay, when I got  
13 sentenced to life in prison, it didn't really hit me  
14 until I got to the Reception Center. And one day I was  
15 sitting in the yard and I looked around and I see all  
16 of these faces you know and I said to myself, hey,  
17 guess my life is over with when I got sentenced to  
18 life. You know, that day I made a decision to just  
19 turn away from the gangs.

20                  **PRESIDING COMMISSIONER DAVIS:** Did you ever do  
21 anything active like request to debrief or do anything  
22 like that to disassociate yourself from the gangs?

23                  **INMATE OPALEC:** I'm not in some kind of  
24 organized crime. I mean, my gang is you know, it's  
25 just a bunch of teenagers that probably got together.  
26 You know, it's not a big mafia or anything like that.

27                  **PRESIDING COMMISSIONER DAVIS:** So you don't feel

1 you had anything to offer in the debrief setting?

2 **INMATE OPALEC:** I don't think so.

3 **DEPUTY COMMISSIONER SMITH:** Commissioner let me  
4 note that the C File indicates that Mr. Opalec has been  
5 a validated a gang member each year that he's been in  
6 custody with the latest validation being completed in  
7 July of 2005. Under that validation is as a member not  
8 an associate.

9 **INMATE OPALEC:** What do you mean validation?

10 **ATTORNEY RUTLEDGE:** You're C File indicates that  
11 you're a gang member, that you have been every year  
12 since you've been in prison.

13 **INMATE OPALEC:** I mean, of course it's going to  
14 say that because that's what I was arrested for. My  
15 case is gang affiliated.

16 **ATTORNEY RUTLEDGE:** Well you don't need to  
17 explain to me. I'm just here. I don't believe that  
18 you're a gang member. I think there is something wrong  
19 with that process but he's just noting for the record  
20 that it's -- that it is in your file.

21 **PRESIDING COMMISSIONER DAVIS:** All right. But  
22 your testimony here today is that you're not doing  
23 anything that would actively associate you as a gang  
24 member?

25 **INMATE OPALEC:** That's what I'm trying to say.  
26 I mean, me being a gang member is always going to be on  
27 the records, is always going to be a part of me. But

1 if I don't participate then you can't believe. You  
2 know, I'm not doing anything that's negative or  
3 pertains to any gang activity.

4 **PRESIDING COMMISSIONER DAVIS:** Commissioner any  
5 questions?

6 **DEPUTY COMMISSIONER SMITH:** No I have no  
7 questions.

8 **PRESIDING COMMISSIONER DAVIS:** All right. I'll  
9 ask you to turn your attention please to Commissioner  
10 Smith.

11 **DEPUTY COMMISSIONER SMITH:** Sir, according to  
12 the C File you were received by the Department of  
13 Corrections on May 1<sup>st</sup>, 1992. Received here at CTF on  
14 May 17<sup>th</sup>, 2000. You have a classification score of 19,  
15 which is the lowest classification score that a life  
16 inmate can attain. Your last hearing was held on  
17 January 28<sup>th</sup>, 2005. That was your fourth Subsequent  
18 Hearing and you received a one-year denial at that  
19 time. You've been completely disciplinary free since  
20 your incarceration. No 115's, no 128's and certainly  
21 you are to be commended for that achievement. That's  
22 an achievement that is rarely seen and we recognize how  
23 difficult it is to make that accomplishment. You've  
24 received a number of laudatory chronos. You received  
25 four dated March of 05', June of 05', January 06' and  
26 April of 06' for your continued participation in  
27 Narcotics Anonymous. If you were returned to the

1 community would you continue to participate in  
2 Narcotics Anonymous?

3 **INMATE OPALEC:** Yes.

4 **DEPUTY COMMISSIONER SMITH:** Why?

5 **INMATE OPALEC:** Excuse me, can you say that  
6 again?

7 **DEPUTY COMMISSIONER SMITH:** If you received a  
8 parole date, would you continue to participate in  
9 Narcotics Anonymous in the community?

10 **INMATE OPALEC:** Yes I would if it's available to  
11 me.

12 **DEPUTY COMMISSIONER SMITH:** And why?

13 **INMATE OPALEC:** Because that's what keeps me  
14 from using drugs, that's my motivation to stay sober.

15 **DEPUTY COMMISSIONER SMITH:** You received a  
16 laudatory chrono February 2006 on the 23<sup>rd</sup> for the  
17 completion of the Angry Heart Video Series. You  
18 received two laudatory chronos both in April of 2006,  
19 one of the 5<sup>th</sup> and the other on the 7<sup>th</sup> for your  
20 participation and completion of video presentations in  
21 the inmate employability program. And then June of  
22 2005 you completed the Way to Happiness course that was  
23 presented by Criminon C-R-I-M-I-N-O-N. In addition to  
24 those activities you received your GED in October of  
25 1997 and you completed the vocational paint and  
26 decorating program in January of 2003. You've been  
27 assigned to PIA wood products for a number of years and

1 you're currently working as a machine operator is that  
2 right?

3 **INMATE OPALEC:** That's correct.

4 **DEPUTY COMMISSIONER SMITH:** Okay. And you've  
5 consistently received excellent grades in that  
6 assignment. Before we go to the psychological  
7 evaluation are there any other activities that you've  
8 been involved with since your last hearing that I  
9 haven't addressed that I should be aware of?

10 **INMATE OPALEC:** I been attending Buddhism class,  
11 a meditation class.

12 **DEPUTY COMMISSIONER SMITH:** Okay. Buddhism  
13 meditation class.

14 **INMATE OPALEC:** Yes.

15 **DEPUTY COMMISSIONER SMITH:** Okay. And how often  
16 do you do that?

17 **INMATE OPALEC:** Once a week, I attend the class  
18 once a week.

19 **DEPUTY COMMISSIONER SMITH:** And how long does  
20 that go, is it an hour or two hours?

21 **INMATE OPALEC:** An hour and a half.

22 **DEPUTY COMMISSIONER SMITH:** An hour and a half.  
23 And it's led by a Buddhist Monk or a layperson.

24 **INMATE OPALEC:** It's a Buddhist from the  
25 streets.

26 **DEPUTY COMMISSIONER SMITH:** Okay. From the  
27 community.

1                   **INMATE OPALEC:** They practice Buddhism.

2                   **DEPUTY COMMISSIONER SMITH:** Okay. And how long  
3 have you been that?

4                   **INMATE OPALEC:** About, I started in 2004.

5                   **DEPUTY COMMISSIONER SMITH:** Okay. Was it  
6 addressed at your last hearing? Do you recall?

7                   **INMATE OPALEC:** It was not.

8                   **DEPUTY COMMISSIONER SMITH:** Okay.

9                   **ATTORNEY RUTLEDGE:** There also should be in the  
10 IAP, I think there's two chronos. One's for reengaging  
11 and ones for anger management. Is that correct?

12                   **DEPUTY COMMISSIONER SMITH:** That's correct. I  
13 addressed the two laudatories for the two different  
14 programs.

15                   **ATTORNEY RUTLEDGE:** Oh you did.

16                   **DEPUTY COMMISSIONER SMITH:** One April 5 and the  
17 other April 7<sup>th</sup>.

18                   **ATTORNEY RUTLEDGE:** I didn't hear you say the  
19 anger management one.

20                   **DEPUTY COMMISSIONER SMITH:** Yeah, I actually  
21 identified there were completion of two video series  
22 within that program. I didn't specify as to what the  
23 programs were. We have a psychological evaluation  
24 dated December 2004. Prepared by Doctor Gleason G-L-E-  
25 A-S-O-N. That evaluation was used at your last  
26 consideration hearing. So I'm only going to address a  
27 couple of sections of the hearing that I think are most

1 pertinent and then if there are any other sections or  
2 any comments that either you or Ms. Rutledge would like  
3 to make for the record you certainly have that  
4 opportunity. All right. Referring to page three under  
5 Axis I, II, and III indicates that there is no clinical  
6 personality or physical disorder. Under Axis IV, there  
7 is stress as a result of long-term incarceration and  
8 that's a standard diagnostic impression that's implied  
9 to all life prisoners. You have a Global Assessment  
10 Functioning Score of 80 and Dr. Gleason wrote at the  
11 time that when you're given a release date your  
12 prognosis for the ability to maintain your current  
13 mental status in the community upon parole was  
14 excellent. Moving to page five, under assessment of  
15 dangerousness the doctor writes that since the last  
16 board report you continue to be disciplinary free. And  
17 it's therefore believed that you would pose less than  
18 an average risk of violence when compared to other  
19 level two inmates. And if released to the community  
20 after 14 years, other clinical and historical factors  
21 taken into consideration. That your violence potential  
22 would now be estimated to be no more than that of the  
23 average citizen in the community and that the only risk  
24 factor would be if you were to return to the use of  
25 amphetamines, marijuana or any type of gang  
26 affiliation. And with that, any other sections that  
27 you'd like to have noted for the record or any

1 comments?

2                   **ATTORNEY RUTLEDGE:** Yes sir. Thank you. I  
3 would note that on page four of Doctor Gleason's report  
4 under three B. It appears that Mr. Gamard (phonetic),  
5 I'm sorry, Doctor Gleason addressed several questions  
6 that a previous panel had inquired about and one of  
7 them was substance abuse and how it relates to the  
8 commitment offense. "And it said an estimate of the  
9 prisoner's authority to refrain from the use or abuse  
10 of the same when released and he answers inmate Opalec  
11 has attended 12 years of Alcoholics Anonymous and  
12 Narcotics Anonymous. He has been incarcerated for 14  
13 years. He has never received so much as a 128. He has  
14 truly been a model prisoner. The idea that he could  
15 return to the use alcohol and drugs as is anybody else  
16 is up to him. However, history and length of time of  
17 sobriety coupled with the lack of disciplinary or other  
18 issues that would lead one to believe that this is  
19 still a problem, leads this clinician to believe it is  
20 a situation, which has been thoroughly thought through  
21 and is no longer an issue." I would note to that on  
22 page five of Doctor Gleason's report under three E he  
23 says on the need for further therapy programs while  
24 incarcerated, that was another issue that the board  
25 asked him to address. "As previously noted, this  
26 inmate has done every self-help program available to  
27 him and some that were not. There are no other

1 programs this inmate needs to continue if the end  
2 result is to further explore the underlying causes of  
3 his commitment offense, that task has been completed."

4 Okay. And finally, on page six under number three it  
5 says, "inmate Opalec has programmed very well. His  
6 behavior has been exceptional in prison and there does  
7 not appear to be any specific reason for continued  
8 incarceration." That's it.

9 **DEPUTY COMMISSIONER SMITH:** Thank you. With  
10 regard to your parole plans and we'll refer back to the  
11 board report January of 06'. It indicates that you  
12 would reside with your mother and I'm going to  
13 apologize in advance for mispronouncing her last name.  
14 There is certainly no disrespect intended. But Soledad  
15 Demopolis.

16 **INMATE OPALEC:** That's correct.

17 **ATTORNEY RUTLEDGE:** That was good.

18 **DEPUTY COMMISSIONER SMITH:** Thank you. And in  
19 the board report it indicates that she resides in the  
20 Philippines. However, a letter that I'll address in  
21 more detail, which you provided today, indicates that  
22 she lives in Linwood California.

23 **INMATE OPALEC:** (inaudible) there in the  
24 Philippines at this time. They went for a vacation.

25 **DEPUTY COMMISSIONER SMITH:** Because the board  
26 report is dated -- oh there on vacation in the  
27 Philippines.

1                   **INMATE OPALEC:** Yes.

2                   **DEPUTY COMMISSIONER SMITH:** So they --

3                   **INMATE OPALEC:** The support letter was sent from  
4                   the Philippines. If you look at the envelope, here, it  
5                   was mailed in the Philippines.

6                   **DEPUTY COMMISSIONER SMITH:** Okay. But they  
7                   reside in Linwood California.

8                   **INMATE OPALEC:** Yeah, along with my sister.

9                   **DEPUTY COMMISSIONER SMITH:** Okay. And then with  
10                  regard for employment, indicates that you'd work for  
11                  your aunt.

12                  **INMATE OPALEC:** Yes.

13                  **DEPUTY COMMISSIONER SMITH:** Concordia Seballe  
14                  (phonetic).

15                  **INMATE OPALEC:** Seballe.

16                  **DEPUTY COMMISSIONER SMITH:** Seballe who operates  
17                  an import/export shop in the Philippines.

18                  **INMATE OPALEC:** That's correct.

19                  **DEPUTY COMMISSIONER SMITH:** So my question is,  
20                  an it is that if your plan is to reside with your  
21                  mother and stepfather in Linwood California, which is  
22                  where they reside.

23                  **INMATE OPALEC:** No that's not correct sir. My  
24                  parole plans is to return to the Philippines.

25                  **DEPUTY COMMISSIONER SMITH:** Okay. And you would  
26                  reside with your aunt and uncle?

27                  **INMATE OPALEC:** That's correct.

1                   **DEPUTY COMMISSIONER SMITH:** Okay. So the board  
2 report would indicate that you reside with your mother  
3 is incorrect.

4                   **INMATE OPALEC:** That was before they retired to  
5 the Philippines. See that board you were -- the  
6 reports you were referring to was done 2004.

7                   **DEPUTY COMMISSIONER SMITH:** No, it's January  
8 2006.

9                   **ATTORNEY RUTLEDGE:** They copied the information  
10 from 2004. Is that correct?

11                  **DEPUTY COMMISSIONER SMITH:** And the letter is  
12 dated June 2006 and the letter she says that she  
13 resides in the city of Linwood with her husband.

14                  **INMATE OPALEC:** That's correct.

15                  **ATTORNEY RUTLEDGE:** He's going to live with his  
16 aunt and uncle in the Philippines.

17                  **INMATE OPALEC:** I'm not living with my mother  
18 though. I will be residing with my aunt and uncle.

19                  **DEPUTY COMMISSIONER SMITH:** Okay. So the letter  
20 that we have from your mother and your stepfather  
21 offering you residence we can discount.

22                  **ATTORNEY RUTLEDGE:** Well that's if, you know,  
23 some boards have told him in the past that in case INS  
24 doesn't you know for some reason he can't get to the  
25 Philippines right away he's got to have like a back up  
26 plan. So he's gotten that, however, his parole plan is  
27 to reside with his aunt and uncle. Is that correct?

1                   **INMATE OPALEC:** That's correct.

2                   **DEPUTY COMMISSIONER SMITH:** Okay. So it  
3 indicated that the letter is dated June of 2006 and  
4 indicating that your mother and your stepfather live in  
5 Linwood and writes a letter that indicates that they  
6 will support you both financially and emotionally. The  
7 other letter is also dated June 2006, the same date,  
8 June 11<sup>th</sup>, and it's written by your aunt and uncle,  
9 Concordia and Aldentio (phonetic)

10                  **INMATE OPALEC:** Aldentio.

11                  **DEPUTY COMMISSIONER SMITH:** Seballe S-E-B-A-L-  
12 L-E. It indicates they are writing in support of their  
13 nephew. They offer support financially and emotionally  
14 so that you can become an asset to the community and  
15 that they manage their own import/export business and  
16 that they would provide you with a job with that  
17 business as well as housing, financial support,  
18 emotional support and guidance. What kind of a job are  
19 they offering you?

20                  **INMATE OPALEC:** I would be working in the RNR.

21                  **DEPUTY COMMISSIONER SMITH:** Doing what?

22                  **INMATE OPALEC:** Well you know, packing stuff,  
23 shipping it out and receiving it.

24                  **DEPUTY COMMISSIONER SMITH:** Now something that I  
25 noticed about these letters, do you know who wrote  
26 them?

27                  **INMATE OPALEC:** The other one my aunt and the

1 other one is my mother.

2           **DEPUTY COMMISSIONER SMITH:** Okay, I know who  
3 signed them, I'm asking who wrote them because with the  
4 exception of the middle paragraph, one which has to do  
5 with your mother and husband being retired and the  
6 other having to do with your aunt and uncle managing  
7 their own import/export business, the letters are  
8 virtually identical.

9           **INMATE OPALEC:** You see what you guy's have to  
10 understand is English is not our -- English is our  
11 second language. You know, the language is very  
12 limited you know. So they might have just made almost  
13 the same because they didn't know how to express  
14 themselves in a different way.

15           **DEPUTY COMMISSIONER SMITH:** Okay. I can  
16 certainly understand and accept that.

17           **INMATE OPALEC:** Thank you.

18           **DEPUTY COMMISSIONER SMITH:** We send out what are  
19 known as 3042 notices. Those are letters that go out  
20 to the various criminal agencies that were involved in  
21 your commitment offense. We didn't receive any  
22 responses back from those agencies. Now we do have  
23 Mr. Turley present representing the Los Angeles County  
24 District Attorney's Office and will be participating in  
25 the hearing in a short time. Is there anything before  
26 we return to Commissioner Davis; is there anything else  
27 that we should be aware of regarding your parole plans?

1                   **INMATE OPALEC:** No.

2                   **DEPUTY COMMISSIONER SMITH:** All right. Thank  
3 you. Commissioner.

4                   **PRESIDING COMMISSIONER DAVIS:** I am curious  
5 about one thing. I understand the process of the back  
6 up plan now, the issuing of it. In the United States  
7 is there a plan for employment in the United States  
8 also?

9                   **INMATE OPALEC:** I didn't have a -- I did not  
10 make a plan because I have an immigration hold and it's  
11 impossible for me to stay here in the states with that  
12 immigration hold. I can assure you that I will be  
13 deported.

14                  **PRESIDING COMMISSIONER DAVIS:** And that's really  
15 your desire also is to go back to the Philippines?

16                  **INMATE OPALEC:** Yes.

17                  **PRESIDING COMMISSIONER DAVIS:** So even if they  
18 were, whatever, the hold were not there that would be  
19 your desire to go back regardless.

20                  **INMATE OPALEC:** That's correct.

21                  **PRESIDING COMMISSIONER DAVIS:** Let me clarify  
22 one thing. On the gang issue because I noticed that in  
23 another report and I'd be going back to the --  
24 (inaudible) supplemental report, supplemental report --

25                  **ATTORNEY RUTLEDGE:** Excuse me. I would lodge an  
26 objection to these reports. Here's the thing, I've  
27 looked through Title 15. I don't see any authority for

1 the DA to submit reports that go in his C File.  
2 There's a letter submitted by Diane Fasoni (phonetic)  
3 at their office sending a bunch of reports in and put  
4 this in his C File. There is no authority for that.  
5 There's no review system to decide like I said if there  
6 aren't more supplemental reports that this information  
7 was done not to be true. The reports aren't even  
8 signed. So I would call that unreliable information  
9 and illegal and I would ask the board not to even read  
10 it, don't put it into the record. There is no basis  
11 for it.

12 **PRESIDING COMMISSIONER DAVIS:** Well it might  
13 have been prudent to wait until I asked the question  
14 before you objected because what I'm going to use the  
15 report for is to simply get some clarification. And  
16 that is that the report itself indicates that you  
17 belong to a different gang, to the Long -- let's see,  
18 it says I checked with the Long Beach Police Department  
19 and confirmed that -- did you also have a nickname by  
20 the name of Sneaky?

21 **INMATE OPALEC:** No.

22 **PRESIDING COMMISSIONER DAVIS:** No. Okay. So  
23 this is somebody else. Because this -- well it's also  
24 a known member of the Long Beach Local Boys. So this  
25 part isn't you.

26 **INMATE OPALEC:** No, that's one of my crime  
27 partners.

1                   **PRESIDING COMMISSIONER DAVIS:** Okay. All right.  
2   So that's not you. All right. Well that clarifies  
3   that then. You were about 20 years old at the time  
4   this offense was committed.

5                   **INMATE OPALEC:** That's correct.

6                   **PRESIDING COMMISSIONER DAVIS:** Were you one of  
7   the older members of the gang?

8                   **INMATE OPALEC:** Yeah, one of the older.

9                   **PRESIDING COMMISSIONER DAVIS:** So it wouldn't be  
10   an issue that you were trying to impress anyone or  
11   anything with your participation in this gang. Is that  
12   an accurate statement or not?

13                  **INMATE OPALEC:** I was influenced.

14                  **PRESIDING COMMISSIONER DAVIS:** By who?

15                  **INMATE OPALEC:** By the rest of my homeboys.

16                  **PRESIDING COMMISSIONER DAVIS:** So you weren't  
17   really a leader of the group.

18                  **INMATE OPALEC:** No.

19                  **ATTORNEY RUTLEDGE:** Are you -- are we getting  
20   into the commitment offense?

21                  **PRESIDING COMMISSIONER DAVIS:** No. I'm just  
22   talking about gang activities you know.

23                  **ATTORNEY RUTLEDGE:** Okay.

24                  **PRESIDING COMMISSIONER DAVIS:** Do you have a  
25   thought as to why you became involved with the gangs  
26   originally?

27                  **INMATE OPALEC:** Originally was when I came from

1 the Philippines I didn't know anybody when I started  
2 going to school. I didn't know anybody here. It was  
3 like my first day of school I met these other guys you  
4 know. But at the time I didn't know they were gang  
5 members. So I'm like you know, I'm having problems to  
6 adjust you know because of that language barrier. The  
7 United States a whole lot different than what I was  
8 used to you know. And I guess it was the sense of  
9 belonging that pulled me into these guys. That's the  
10 best explanation that I can come up with.

11 **PRESIDING COMMISSIONER DAVIS:** Okay. You've  
12 been actively involved in AA or NA?

13 **INMATE OPALEC:** NA.

14 **PRESIDING COMMISSIONER DAVIS:** NA?

15 **INMATE OPALEC:** And AA.

16 **PRESIDING COMMISSIONER DAVIS:** And what steps  
17 have you found to be most helpful for you?

18 **INMATE OPALEC:** Step 11.

19 **PRESIDING COMMISSIONER DAVIS:** Which is what?

20 **INMATE OPALEC:** Solitude, prayer and meditation  
21 to improve conscious contact with God as we understand  
22 him.

23 **PRESIDING COMMISSIONER DAVIS:** And how has that  
24 helped you?

25 **INMATE OPALEC:** It keeps me focused on my daily  
26 tasks you know. Because meditation helps me to be  
27 aware of how my action is because everything starts

1 from the mind. If I was aware of what I was thinking  
2 and my actions it would be a lot better for me and my  
3 people around me, and the people around me.

4 **PRESIDING COMMISSIONER DAVIS:** Now what's your  
5 plan on how to avoid becoming reengaged in gang  
6 activity or any sorts of criminal activity if you were  
7 to receive a date?

8 **INMATE OPALEC:** I'm just -- I just made that  
9 decision that I'm through with the gang you know. It  
10 just -- I believe that when a man says he's done doing  
11 something it can be done. You know, and that's what I  
12 want to do.

13 **PRESIDING COMMISSIONER DAVIS:** All right. Any  
14 other questions Commissioner?

15 **DEPUTY COMMISSIONER SMITH:** No I don't have any  
16 questions. But in response to the counsels comment  
17 regarding the information in the board report that you  
18 addressed. It's important to know that the board has  
19 no jurisdiction with regard to what goes into the C  
20 File or what doesn't.

21 **ATTORNEY RUTLEDGE:** I understand that. But it's  
22 unreliable.

23 **DEPUTY COMMISSIONER SMITH:** Well, but any  
24 information that has been deemed to be appropriate to  
25 be in the C File or the board report by the Department  
26 of Corrections, which is outside the authority of the  
27 board is available for the board to review just as it

1 is for the inmate to review or for you to review.

2                   **ATTORNEY RUTLEDGE:** So you'd review anything as  
3 long as it's in there, you're going to consider it  
4 relevant or --

5                   **DEPUTY COMMISSIONER SMITH:** Well we may or may  
6 not. We'll make that decision depending on a whole  
7 number of factors. But the fact that it's been  
8 included in the C File of itself doesn't make it  
9 irrelevant. It makes it available to be considered.

10                  **ATTORNEY RUTLEDGE:** I would disagree but thank  
11 you.

12                  **DEPUTY COMMISSIONER SMITH:** And I would add to  
13 that that if there's anything in the C File that  
14 Mr. Opalec or any other inmate doesn't think is  
15 appropriate to be in the C File, during the review of  
16 the C File prior to the board hearing then they can 602  
17 that information and request that it be removed.

18                  **ATTORNEY RUTLEDGE:** All right.

19                  **DEPUTY COMMISSIONER SMITH:** So there is a  
20 procedure. So I wanted to answer the objection.

21                  **ATTORNEY RUTLEDGE:** Well can I just add though  
22 that he doesn't have attorney representation at the  
23 time he reviews his C File and how we even get the  
24 probation report and that kind of stuff in is because  
25 it's been reviewed by the court. So anything sent into  
26 the C File with no kind of filter -- I mean, I just  
27 think it's suspect and he didn't even know that he had

1 that right. He's not advised of that you know. And  
2 the DA should know they don't have the authority to put  
3 stuff in the C File. I think it's unethical for them  
4 to do it.

5 **DEPUTY COMMISSIONER SMITH:** And we're not going  
6 to beat this to death. The DA doesn't put anything in  
7 the C File.

8 **ATTORNEY RUTLEDGE:** But they send it and they  
9 ask for it to be done.

10 **DEPUTY COMMISSIONER SMITH:** They send it and  
11 then it's the decision of the Department of Corrections  
12 and Rehabilitation to whether it goes in the C File or  
13 not.

14 **ATTORNEY RUTLEDGE:** So if they get away with it  
15 it's okay.

16 **DEPUTY COMMISSIONER SMITH:** If Mr. Opalec or any  
17 other inmate has an issue with what's in the C File,  
18 when they do their review, which they have a right to  
19 do, they can question the inclusion of that information  
20 with their correctional counselor. That is an option  
21 that they have and if there not satisfied with the  
22 correctional counselors response they can 602 the  
23 inclusion of that material. So there are steps in  
24 place for an inmate to have documents in the C File  
25 removed that they don't think are appropriate.

26 **PRESIDING COMMISSIONER DAVIS:** All right. Does  
27 the district attorney have any questions?

1                   **DEPUTY DISTRICT ATTORNEY TURLEY:** Given the  
2 inmates refusal to discuss the underlying offense, no  
3 questions.

4                   **PRESIDING COMMISSIONER DAVIS:** All right.

5                   **PRESIDING COMMISSIONER DAVIS:** Ms. Rutledge.

6                   **ATTORNEY RUTLEDGE:** No questions.

7                   **PRESIDING COMMISSIONER DAVIS:** Closing.

8                   **DEPUTY DISTRICT ATTORNEY TURLEY:** I think that  
9 it's of paramount importance that the record always  
10 include accurate statement of the facts, the underlying  
11 facts in the offense. And I appreciate Commissioner  
12 Smith's explanation as to how items are received into  
13 the C File and how they may be used. I'd like to make  
14 it clear with respect, I intent to read from the  
15 sheriff's reports that are here. But before I do that  
16 I want to make it clear that there's a letter in the  
17 file dated February 2<sup>nd</sup>, 1999 from Diane Fasoni and it's  
18 a letter to the board of prison terms. And it says  
19 that this inmate had a hearing November 5<sup>th</sup> and at that  
20 hearing the board requested the enclosed police report  
21 to be available for the next hearing. And then she  
22 says that that's included, that that's included in the  
23 mailing. The next page is an affidavit and it says  
24 that your client has obtained the information from  
25 those that have knowledge of said offenses, whose  
26 reports are attached here to incorporate by reference.  
27 He's reviewed each of these written reports and

1 statements. They were prepared by persons known to you  
2 client to be law enforcement officers and others.  
3 These reports and statements consist of 13 pages.  
4 These reports and statements contain information from  
5 victim's, witnesses, and others concerning commission  
6 of criminal offense. And it goes on it's an affidavit  
7 saying know who these people are it's signed by a  
8 court.

9 **ATTORNEY RUTLEDGE:** Signed by the court did you  
10 say?

11 **DEPUTY DISTRICT ATTORNEY TURLEY:** Yes.

12 **ATTORNEY RUTLEDGE:** What court?

13 **ATTORNEY RUTLEDGE:** Compton Judicial District,  
14 says judge in this report Compton Judicial District  
15 dated 10/20/1990. It should be in your file. And so I  
16 think that while is far above the standard that's  
17 required for something to be placed in the file. That  
18 these documents are rightfully there and they exceed  
19 the standard in many ways. I think that the factual  
20 statement included in the previous board report and  
21 read by the chair here is accurate but I believe that  
22 it is -- it's not really complete, as complete as it  
23 should be. I am reading from page two of nine from the  
24 sheriff's report. The investigating officer writes;  
25 "we then responded to go to David Polito's (phonetic)  
26 house. To contact him regarding inmate, knocked on the  
27 door. He refers him to Mr. Polito. And say as I

1 talked with the three I saw that suspect Opalec was  
2 becoming very nervous about our conversation. I asked  
3 suspect Opalec if he knew why I was there and he  
4 replied yes, I think so. I then asked him to come  
5 outside with me so that we could talk in private. I  
6 told the suspect that I knew that he and the other  
7 suspects were in the car that did the shooting in  
8 Carson. I further told him that the guy that did the  
9 shooting was the front passenger of the car and that I  
10 also knew his name. I then asked the suspect if he  
11 could tell me the shooters name. The suspect looked  
12 down and started to cry. After a few seconds the  
13 suspect then said, I was the one in the passenger seat.  
14 I shot the gun." I think that that's relevant and it's  
15 not included in the previous factual statement. Then  
16 on page six of the same document the investigator  
17 writes, "All of the suspects were interviewed. Asked  
18 me if they killed anyone on the night of this incident.  
19 The suspects all admitted to one, going to the park for  
20 the purpose of discussing a retaliation shooting. Two,  
21 planning the shooting with each other and the use of a  
22 backup car. Three, preparing for the shooting by  
23 arming themselves. Four, driving to the location for  
24 the purpose of committing the shooting. Five,  
25 committing the shooting. Six, returning to the park  
26 and discussing the shooting. Due to the above, it's  
27 obvious that all the suspects conspired with each other

1 for the purpose of committing murder of a rival gang  
2 member." I think that those facts adds greatly to a --  
3 are crucial to an understanding of this underlying  
4 offense. And they make it clear to me that this  
5 particular inmate by his own statement, his own  
6 admission was a shooter. One of the reasons of the  
7 report is necessary when in essence it's important for  
8 it to be included in the file is that with respect to  
9 suspect Opalec, his offense was resolved by a plea on  
10 his part so of course there's no court transcript. And  
11 I would submit that the most reliable information  
12 provides details about the underlying offense, indeed  
13 comes from the investigating officer from the sheriff's  
14 department that was involved in the investigation and  
15 the apprehension of this group of young men. So the  
16 offense was carefully planned, carefully executed,  
17 carefully carried out and it was done so with an intent  
18 to inflict deadly force on people. Unfortunately, the  
19 boy was all to familiar with the adverse affects of  
20 gang activity. And the victim's of gang activity are  
21 the almost infinite victim's extend far beyond those  
22 individuals who were shot or shot at. They extend far  
23 beyond those who care about those who might have been  
24 shot or shot at. The victims extend beyond Mr.  
25 Opalec's family who I would have to assume from what we  
26 see here, were distraught by the fact that he had  
27 chosen to engage himself in this kind of activity. And

1 the victim's include people who are afraid to drive the  
2 streets of their own neighborhood, people who are  
3 afraid to walk the sidewalks of their own neighborhood  
4 and I needn't recount for this board how the cancer of  
5 gang activity affects all of our lives. And the costs  
6 are extracted from all of us. This serious offense has  
7 serious consequences not just for the inmate but for  
8 all of us. And based upon the underlying offense and  
9 apparently Mr. Opalec's continued participation or  
10 involvement in gang activity. That he be commended for  
11 his disciplinary free time in prison. We recognize  
12 that that's a commendable effort. Hopefully it will  
13 lead toward a time when he's suitable for parole but I  
14 would submit that that time is not yet and would  
15 request that at this time he be given a denial. Thank  
16 you very much.

17 **DEPUTY COMMISSIONER SMITH:** Thank you.

18 **PRESIDING COMMISSIONER DAVIS:** All right.

19 Ms. Rutledge.

20 **ATTORNEY RUTLEDGE:** Thank you. At this time I'm  
21 going to ask that the comments that the people read  
22 into the record be stricken and here's why the  
23 information that they read to the panel about this.  
24 This is an affidavit written out by somebody who didn't  
25 do the reports. Somebody who says that I just knew  
26 these were officers. Well any police report we're  
27 going to think it's probably from officers. Nothing in

1 that document makes it any more reliable and we don't  
2 even know who signed it, this affidavit. We can't --  
3 the signature is illegible but it was signed 16 years  
4 ago. It's a joke trying as to say -- give it any more  
5 credibility. The police report as the people well know  
6 are not -- would not be admissible in a court of law  
7 because they are prepared in anticipation of  
8 litigation. These comments, there's no recordings to  
9 back it up. There's no signed confession. This is  
10 what an officer put in his words and he said that all  
11 these people used the same exact words or what don't  
12 even know what every individual said. It's a summary  
13 and it's unreliable. So I'm going to make that request  
14 at that this time.

15 **PRESIDING COMMISSIONER DAVIS:** And I'm going to  
16 deny the request.

17 **ATTORNEY RUTLEDGE:** Thank you. All I have to  
18 say about this case, it speaks for itself. I could  
19 only make things worse by talking any more about it but  
20 this man, there is absolutely no risk. He poses  
21 absolutely no unreasonable risk to society. He has a  
22 very specific thorough psych report that's favorable  
23 and it notes that the previous one was favorable. And  
24 I would add that this man has explains, a young man  
25 came to this country and that's where the gang  
26 association started. He wasn't in gangs in the  
27 Philippines and when he got to prison he made a

1 conscious decision, you know, this isn't the way his  
2 life was going to go. He's never had a rules  
3 violation. He has no family members in gangs. There  
4 is nothing to connect him to any gangs other than when  
5 he came in the institution he had committed a gang  
6 offense. And I don't know if they keep carrying that  
7 over because there's nothing to disprove that or  
8 perhaps because no one has asked him to do debriefing  
9 because no one probably cares what his gang is doing  
10 because it's not like you said, a big operation. So  
11 that's no fault of his own. Aside from that  
12 documentation and the commitment offense, since he's  
13 been locked up he's had no gang affiliation. He's not  
14 a risk. His psych report clearly said there's no  
15 reason for him to remain incarcerated. And I would ask  
16 that the parole board give him a date. Thank you.

17 **DEPUTY COMMISSIONER SMITH:** Thank you.

18 **PRESIDING COMMISSIONER DAVIS:** Sir now is your  
19 opportunity to address the panel directly and tell us  
20 why you believe you are suitable for parole.

21 **INMATE OPALEC:** I just want to say to  
22 Mr. Assunto (phonetic) and Mr. Curmen as well as their  
23 family that I'm really, really sorry for the pain and  
24 suffering I caused them. When I committed this crime I  
25 did not think about the consequences of my action and  
26 people got hurt because of that. And I'm sorry about  
27 it you know. I know there is nothing I can do about it

1 you know, to alleviate the pain and the suffering I  
2 caused them. But the one thing I can do is to change  
3 myself and I believe I have done that. You know,  
4 during my past hearing I was told by the commissioner  
5 (inaudible) that I was very close to getting a parole  
6 date. She said it's to get my parole plans in the  
7 Philippines straighten out which I did and I have that  
8 with me today. I have a job and place to live in the  
9 Philippines and a loving family and relatives that are  
10 waiting for me up there. And I just wish you guys  
11 would give me a chance. Thank you.

12 **PRESIDING COMMISSIONER DAVIS:** All right.

13 **DEPUTY COMMISSIONER SMITH:** Thank you.

14 **PRESIDING COMMISSIONER DAVIS:** We'll now recess  
15 for deliberation.

16 **R E C E S S**

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1                   **CALIFORNIA BOARD OF PAROLE HEARINGS**2                   **D E C I S I O N**

3                   **DEPUTY COMMISSIONER SMITH:** Back on  
4 record. Everyone previously identified is back  
5 in the hearing room.

6                   **PRESIDING COMMISSIONER DAVIS:** This is in  
7 the matter of Roderic Opalec. The CDC number is  
8 H-33214. The panel reviewed all information  
9 received from the public and relied on the  
10 following circumstances in concluding the  
11 prisoner is not suitable for parole and would  
12 pose an unreasonable risk of danger to society or  
13 a threat to public safety if released from  
14 prison. We've come to this conclusion first and  
15 for most by the commitment offense. That the  
16 offense was carried out in an especially callous  
17 manner. There were multiple victims attacked and  
18 one was injured in the same instance. The  
19 offense was carried out in a manner, which  
20 demonstrates an exceptional disregard for human  
21 suffering. The motive for the crime was trivial  
22 in relation to the offense. These conclusions  
23 are drawn from the statement of facts where in  
24 the prisoner together with his crime partners  
25 chose to participate in the retaliation against a  
26 rival gangs. You were convicted of attempted  
27 **RODERIC OPALEC H-33214 DECISION PAGE 1 7/12/06**

1 murder with a firearm. And again the nature of  
2 the crime, you are indeed fortunate that other's  
3 were not injured or killed. We do note on the  
4 positive side that you have no previous record  
5 and that you have no discipline what so ever.  
6 Which again, is an exceptional accomplishment.  
7 (inaudible). Psychological report of 2004 by  
8 Doctor Gleason is supportive. And we note that  
9 you have appropriate parole plans for the  
10 Philippines or first and for most that you have  
11 an INS Hold. And that you do have appropriate  
12 plans in the Philippines for work and residence  
13 with your aunt and uncle and that you have  
14 residential plans with your mother and stepfather  
15 in the United States but you still need to  
16 develop some sort of employment plans should you  
17 remain in the United States. We note that in  
18 regard to the 3042 notices, the District Attorney  
19 from Los Angeles County is here in person by  
20 representative and does oppose parole. Never the  
21 less we do want to commend you for several  
22 things. First and for most is the no discipline.  
23 I don't think I've seen that before frankly. I  
24 don't think that I have ever seen anyone whose  
25 been instituted to not even get a 128. So  
26 congratulations. For your 1997 attainment of  
27 RODERIC OPALEC H-33214 DECISION PAGE 2 7/12/06

1 your GED, for your vocational paint and  
2 decorating class, for your laudatory chronos, for  
3 NA, your laudatory chronos for Healing the Angry  
4 Heart and your inmate Employability Program and  
5 the Ways to Happiness by Criminon. As well as  
6 your participation in the Buddhist meditation  
7 class and your work as a machine operator with  
8 excellent work reports. These positive aspects  
9 however do not outweigh the factors for  
10 unsuitability. And this is a one-year denial.  
11 The panel remains -- or the panel recommends that  
12 you remain disciplinary free, that as available  
13 that you continue with your self help and that  
14 you contact your counselor about meeting with the  
15 gang lieutenant to review the gang validation.  
16 There is a way and I will let Commissioner Smith  
17 elaborate on this but there may be a way you  
18 should be able to get that removed if it's not  
19 accurate. And that you continue to earn positive  
20 chronos and this panel will order a new -- or  
21 will recommend a new psychological report to be  
22 completed prior to the next hearing as well.  
23 Commissioner Smith.

24 **DEPUTY COMMISSIONER SMITH:** My suggestion  
25 would be that you contact your counselor and ask  
26 to speak with one of the officers assigned to the

1 gang unit. It may not be a lieutenant but one of  
2 the officers assigned to the gang unit. And  
3 indicate that the document called the 812 has  
4 continued to validate you as gang member and  
5 you'd like to address that validation with the  
6 hopes of having it removed from the C File. And  
7 then are different steps that vary depending on  
8 gang units and institutions and that kind of  
9 thing to what steps people go through. But if  
10 you don't do that it's going to continue on. We  
11 have no reason not to believe what you're telling  
12 us, that you're no longer involved but as long as  
13 that validation you know continues, we have to  
14 accept it as being factual. I strongly recommend  
15 that you attend to that.

16 **PRESIDING COMMISSIONER DAVIS:** All right.  
17 Again, we wish you best of luck. Stay on the  
18 right path and you're doing well. Anything else?  
19 We are adjourned.

20 **A D J O U R N M E N T**

21 **--oo--**

22

23 **PAROLE DENIED ONE YEAR** **NOV 9 2006**  
24 **THIS DECISION WILL BE FINAL ON** **\_\_\_\_\_**  
25 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**  
26 **DATE, THE DECISION MODIFIED.**

27 **RODERIC OPALEC H-33214 DECISION PAGE 4 7/12/06**

CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, SUE GERDES, a duly designated transcriber,  
NORTHERN CALIFORNIA COURT REPORTERS, do hereby declare  
and certify under penalty of perjury that I have  
transcribed tape(s) which total one in number and cover  
a total of pages numbered 1 - 49, and which recording  
was duly recorded at CORRECTIONAL TRAINING FACILITY,  
SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT  
PAROLE CONSIDERATION HEARING OF RODERIC OPALEC, CDC NO.  
H-33214, ON JULY 12, 2006, and that the foregoing pages  
constitute a true, complete, and accurate transcription  
of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party  
in the above-mentioned matter and have no interest in  
the outcome of the hearing.

Dated October 12, 2006, at Sacramento,  
California.

*Sue Gerdes*

---

SUE GERDES  
TRANSCRIBER  
NORTHERN CALIFORNIA COURT  
REPORTERS

BOARD OF PRISON TERMS  
LIFE PRISONER HEARING DECISION FACE SHEET

STATE OF CALIFORNIA

 PAROLE GRANTED - (YES)CDC: Do not release prisoner before  
Governor's reviewRecords Use Only

Parole Release Date

YR MO DAY

 PAROLE DENIED - (NO)*1 year  
will be Jan '06*

Attach Prison Calculation Sheet

 AGREED UNSUITABLE (Attach 1001A Form) FOR: \_\_\_\_\_ YEAR(S) HEARING POSTPONED/REASON: \_\_\_\_\_

## PANEL RECOMMENDATIONS AND REQUESTS

## The Board Recommends:

 No more 115's or 128A's  Stay discipline free Work to reduce custody level  Learn a trade\* Earn positive chronos Get self-help\*  Get therapy\* Get a GED\* Recommend transfer to Other *Form up parole plan - letter of support*

\*These programs are recommended if they are offered at your prison and you are eligible/able to participate.

Penal Code 3042 Notices DATE: 10-Dec-04

Commitment Offense(s) 187, 12022.5 MURDER W/USE F'ARM

Code(s) Crime(s)

TA009295 5

Case #(s) Count #(s)

Date Inmate Came to CDC 5/1/92 Date Life Term Began 10/10/92 Minimum Eligible Parole Date 10/10/99

 Initial Hearing  Subsequent (Hearing No.) 4 Date of Last Hearing \_\_\_\_\_

CDC Representative

Attorney for Prisoner Address

D.A. Representative County LOS ANGELES

This form and the Board's decision at the end of the hearing is only proposed and NOT FINAL. It will not become final until it is reviewed.

Chair

*Carl Daly*

Date

*1-28-05*

Panel Member

*DM Bean*

Date

*1-28-05*

Panel Member

Date

1                   **CALIFORNIA BOARD OF PRISON TERMS**2                   **D E C I S I O N**

3                   **DEPUTY COMMISSIONER MCBEAN:** All right,  
4                   we're back on record.

5                   **PRESIDING COMMISSIONER DALY:** Okay. The  
6                   Panel has reviewed all of the information received  
7                   from the public and relied on the following  
8                   circumstances in concluding the prisoner is not  
9                   suitable for parole and would pose an unreasonable  
10                   risk of danger to society or a threat to public  
11                   safety if released from prison. Mr. Opalec, we  
12                   were very, very impressed with you today and we had  
13                   a lot of discussion. And when we give a date, we  
14                   want to make sure that we have everything all lined  
15                   up so when this goes forward, there aren't a lot of  
16                   (inaudible). I'm going to tell you what it is that  
17                   we think you need to do today for when you come  
18                   back. And are you also aware that even if we give  
19                   you a date and it goes over to the Governor, that  
20                   he does not have a final say-so, because this is an  
21                   attempt murder and not a murder case. So even if  
22                   he were to reverse it -- and I know there's really  
23                   strong feelings about gangs -- problems, because of  
24                   the big issue that they are in any jurisdiction.  
25                   And so if he did not think that you should be out  
26                   on the streets, he would still have to refer it  
27                   **RODERIC OPALEC H-33214 DECISION PAGE 1 1/28/05**

1 back to the Board. So the Panel member who is  
2 sitting on your Panel (inaudible) would be the one  
3 that would argue to the other Commissioners at a  
4 Board meeting as to why they felt you were suitable  
5 for parole at this time. And then it would be all  
6 of the members voting on your release date. And  
7 so, to have everything lined up is extremely  
8 important at this time. And so, do you hear what  
9 I'm saying? Do you understand?

10 **INMATE OPALEC:** Well, I understand.

11 **PRESIDING COMMISSIONER DALY:** Where your  
12 parole suitability, whose hands it really lies in?

13 **INMATE OPALEC:** Well, it lies in your  
14 hands.

15 **PRESIDING COMMISSIONER DALY:** And the other  
16 Commissioners --

17 **INMATE OPALEC:** Yes.

18 **PRESIDING COMMISSIONER DALY:** -- if the  
19 Governor were to send it back and say he disagrees  
20 with the findings. So I want to make sure that you  
21 understand that. And the offense, of course, was  
22 quite callous. (Inaudible) because (inaudible) to  
23 what was going to happen. And there were many  
24 victims that could have been hit. One was -- you  
25 know, two were shot at and one was hit. It could  
26 have been more and you were just very lucky that

1 nobody was killed. Otherwise, you would probably  
2 be living your life forever here. It was  
3 calculated because you formed a plan to go back  
4 over there and do the retaliation. Discussion was  
5 at the park. You agreed to be the shooter. You  
6 agreed to sit in the front seat. So, it was quite  
7 a calculated crime. And that is often the case  
8 with gang retaliation shootings with gang members.  
9 And the offense was carried out in a manner that  
10 showed a total disregard for human suffering. No  
11 thought was given to the fact if you did hit  
12 somebody (inaudible). And the motive for the crime  
13 was extremely trivial in relation to the offense,  
14 in that the whole reason for this shooting was gang  
15 warfare and retaliation. These conclusions are  
16 drawn from the Statement of Facts, wherein the  
17 prisoner came from the Philippines (inaudible)  
18 caught up in joining the gang of the Long Beach  
19 Local Boys, which was the gang members that were of  
20 the same ethnicity. And one of their members had  
21 been shot by the Scott Royal Brothers gang and so  
22 they decided to go back and retaliate. In doing  
23 so, both the prisoner and the -- another gang  
24 member (inaudible) fired weapons at (inaudible)  
25 Royal gang. The (inaudible) had a handgun. He  
26 claimed to have fired two shots with the handgun

1 but he did not hit the person he was shooting at.  
2 His crime partner in the other car used a shotgun  
3 and did wound one of the gang members. No one died  
4 as a result of the injuries. In looking at your  
5 background, you really had no criminal background.  
6 And until you came to the United States and became  
7 involved in the gang issues was when you had  
8 started using some drugs, marijuana,  
9 methamphetamines (inaudible). (Inaudible) of the  
10 record that you had experimented with cocaine, so  
11 we didn't really talk about that. Your prior  
12 criminality, you've been arrested once for a  
13 burglary and that was dropped. So, most of your  
14 unstable social history came after you joined the  
15 gang members and were running with them and that's  
16 when you were involved in the things that led you  
17 to where you are. But you had a stable upbringing,  
18 a stable social life in the Philippines, where you  
19 were raised by your grandmother. The prisoner  
20 actually continued with his self-help, in involving  
21 yourself in programs and you need to continue to do  
22 that. I'm really impressed, because you do have  
23 two completed vocations and I think you have been  
24 doing all of the things that you should while you  
25 are incarcerated to make yourself suitable for  
26 parole. And you've completed both of those, good

1 vocations. You've been working in PIA Wood since  
2 '93. You have a card that says that you would be  
3 employable, would give you preference. You've been  
4 involved in a number of self-help, so I would just  
5 encourage you to continue your involvement in self-  
6 help. And your attorney mentioned that you were  
7 attending church. We didn't really talk about that  
8 and I don't know what services you're attending,  
9 but I don't know if you could get a letter from the  
10 people that run the services to indicate that you  
11 do attend services and how often you attend and  
12 everything. So, that's another source of a support  
13 letter that you could get. You have really  
14 excellent work reports. The psychiatric,  
15 psychological report, dated 12/7 of '04 by  
16 Dr. Gleason is a very, very supportive report, as  
17 are your other -- your other psychiatric reports.  
18 Your parole plans, and here's where I want to talk  
19 to you, about your parole plans. When I look, you  
20 have a letter of support from you mom and your  
21 stepfather in Long Beach, that you could come and  
22 live there. Although, it doesn't say anything  
23 about whether or not they could find you a job or  
24 what you would be doing. You didn't make any  
25 inquiries as to where you might be able to go to a  
26 substance abuse program or what kind of counseling  
27 RODERIC OPALEC H-33214 DECISION PAGE 5 1/28/05

1 you might be able to get when you're released  
2 there. That needs to be a part of your parole  
3 plan, because you do have a history of marijuana,  
4 using that and experimenting. Even though you  
5 haven't used drugs all this time in prison, you  
6 were on the street. And going back out into  
7 society, keeping away from gangs and keeping away  
8 from drugs, they're rampant more than ever on the  
9 streets. So we need to know what kind of support  
10 you're going to have in place, you know, to get to  
11 counseling, to (inaudible). So check with your mom  
12 and find out where those substance abuse groups  
13 are, AA or NA, where they are around where they  
14 live and when you -- where you can go to the  
15 meetings. And I don't know if they would be able  
16 to find you employment or anything. But your  
17 choice, your only choice is to go back to the  
18 Philippines. And what we're concerned about, the  
19 letter from your aunt and uncle, you have a place  
20 to live and they're going to allow you to work  
21 there. But when we asked you what kind of support  
22 groups and help that you're going to find there,  
23 you really didn't know. You don't know what you're  
24 going to be doing for them and you don't have any  
25 idea what you're going to be making. And I think  
26 that you really need to communicate very frequently

1 with your aunt and your uncle to see if they can be  
2 a little bit more defining about what your job is  
3 going to be and what they're going to offer you.  
4 And I asked you about your family in the  
5 Philippines and you said that you had lots. But it  
6 would really be extremely important, to show the  
7 Board that you're going to be successful there, if  
8 you could get letters from your family members over  
9 there saying that they are going to support you and  
10 stand by you. Now, I don't know what your culture  
11 is in the Philippines, with you going back, having  
12 been in prison and so, I don't know if your whole  
13 family is going to embrace you or not. And the  
14 only way that we would know about that would be if  
15 we had letters of support. So that's probably the  
16 weakest thing that we have right now, are support  
17 letters and your -- possibly places you could work,  
18 where you could go for counseling and help in Los  
19 Angeles. And more importantly, what kind of  
20 support and what is available to you in the  
21 Philippines. So, you need to do a lot of writing  
22 (inaudible), okay? And figure out what programs  
23 are going to be there for you.

24                   **INMATE OPALEC:** Thank you. Can I say  
25 something about that?

26                   **PRESIDING COMMISSIONER DALY:** Okay, just a  
27                   RODERIC OPALEC H-33214 DECISION PAGE 7 1/28/05

1 minute, until I finish reading this. The hearing  
2 Panel notes that 3042 notices indicate an  
3 opposition to a finding of parole suitability from  
4 the District Attorney from Los Angeles, who was  
5 here today. But I think when you listen to her  
6 statement, she also feels that you're really,  
7 really close and gave a lot of recognition to you  
8 for the program that you've been doing and your  
9 honesty and everything here today. And I think  
10 that was also her concern, as to exactly what kind  
11 of support you're going to have in either place.  
12 So, I talked about all of the things you should be  
13 commended for. You've been in PIA Wood since '93.  
14 You have your GED, on top of the schooling that you  
15 had while you were in the Philippines. And you  
16 have two completed vocations. You have been  
17 steadily involved in AA and NA. You've taken a  
18 couple of the FEMA courses, Inmate Employability  
19 Program, Fatherhood (inaudible) Training, the  
20 Impact Program, Crim-Anon, you're currently in,  
21 Salesmanship class in '01 and indicated that you  
22 are attending church. And you get excellent work  
23 reports and you've had absolutely no disciplinary  
24 write-ups, either 115s or 128(a)s. So this is  
25 going to be a one year denial and we just ask that  
26 you remain disciplinary free and continue to

1 participate in as much self-help as you can. You  
2 need to get busy and communicate with all of your  
3 family to try and get your support letters in. And  
4 we'll see you in one year. Do you understand what  
5 (inaudible)?

6 **INMATE OPALEC:** Yes.

7 **PRESIDING COMMISSIONER DALY:** Okay.

8 **DEPUTY COMMISSIONER MCBEAN:** (Inaudible.)

9 **PRESIDING COMMISSIONER DALY:** Yes. And was  
10 there something you wanted to say?

11 **INMATE OPALEC:** Yeah, I just wanted to ask  
12 if it -- if that's required by the Board of Prison  
13 Terms, for me to involve myself in Alcoholics  
14 Anonymous --

15 **PRESIDING COMMISSIONER DALY:** Yes.

16 **INMATE OPALEC:** -- out there?

17 **PRESIDING COMMISSIONER DALY:** Yes. It  
18 would be ordered as part of your parole.

19 **INMATE OPALEC:** No. Does it -- does it  
20 require for me to be found suitable though?

21 **ATTORNEY TARDIFF:** You mean, under  
22 suitability factors?

23 **INMATE OPALEC:** Under suitability factors.

24 **PRESIDING COMMISSIONER DALY:** Yes. Yes, it  
25 requires -- you have to be found suitable by this  
26 Panel to put everything into motion for you to get

1 released.

2 **ATTORNEY TARDIFF:** I'll answer him,  
3 Commissioner, when we get out.

4 **PRESIDING COMMISSIONER DALY:** Okay. And so  
5 what I've told you is what this Panel -- we want to  
6 make sure that we have a strong argument when it  
7 goes forward. And there's a little bit of work  
8 that you need to do on your parole plans, okay?  
9 You -- I can't tell you (inaudible).

10 **INMATE OPALEC:** (Inaudible.)

11 **PRESIDING COMMISSIONER DALY:** Okay?

12 **INMATE OPALEC:** Yeah.

13 **PRESIDING COMMISSIONER DALY:** Okay. Did  
14 you have something you wanted to say?

15 **DEPUTY COMMISSIONER MCBEEAN:** Well, yes, I  
16 do. Mr. Opalec, I don't want you to be discouraged  
17 about this decision today. We think that you're  
18 really close to a date and we recognize all of the  
19 positive things that you've done. And so I think  
20 it's really important for you to keep your eye on  
21 the ball over the next year, to pay attention to  
22 the things that the Board is asking you to do. And  
23 you know, there's not that much left for you to do,  
24 except that you've just got to tie up some loose  
25 ends here and make sure you don't get any 115s.  
26 Make sure you continue to involve yourself in self-  
27 RODERIC OPALEC H-33214 DECISION PAGE 10 1/28/05

1 help, as much as possible. You know, and it varies  
2 from one institution to the next, what's available.  
3 But whatever is available, you know, get yourself  
4 involved and make sure you get chronos for  
5 everything that you've done so that you have -- you  
6 get full credit for everything that you've done  
7 when you reappear next year. I want to wish you  
8 the best of luck. Thank you.

9 --o0o--

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23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON: MAY 28 2005

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT

26 DATE, THE DECISION IS MODIFIED.

27 RODERIC OPALEC H-33214 DECISION PAGE 11 1/28/05

# **EXHIBIT “B”**

DEPT.

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: 4-24-92

HONORABLE: VICTORIA CHAVEZ  
J GRULKOWSKIJUDGE  
Deputy SheriffM JOHNSON  
C ROAM, Deputy Clerk  
, Reporter

(Parties and counsel checked if present)

TA009295

PEOPLE OF THE STATE OF CALIFORNIA

VS

OPALEC, RODERIC

Counsel for  
Plaintiff

E HUNTER

, DISTRICT ATTY.

BY

DEPUTY

Counsel for  
Defendant

R YANES 987-2

, PUBLIC DEFENDER

BY

DEPUTY

NATURE OF PROCEEDINGS PROBATION AND SENTENCE

(Boxes checked if order applicable)

PROBATION DENIED. SENTENCE AS INDICATED BELOW.

Whereas the said defendant having..... BEEN.....duly..... FOUND.....  
 guilty in this court of the crime of ATTEMPTED MURDER, IN VIOLATION OF SECTION 664/187(a)PC A FELONY  
AS CHARGED IN COUNT 3 OF THE INFORMATION, THE ALLEGATION THAT IN THE COMMISSION AND  
ATTEMPTED COMMISSION OF THE ABOVE OFFENSE, SAID DEFENDANT, BENEDICT BATO, WITH ALLEGATION  
OF PRINCIPAL ARMED WITH A FIREMAN PURSUANT TO SECTION 12022.5(a)PC. IS TRUE

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the  
 State Prison. **LIFE PLUS 3 YEARS , PLUS 3 YEARS PURSUANT TO SECTION 12022.5(a)PC.**

Defendant is given credit for..... 843.....days in custody (includes 281 days good time/work time).

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles  
 and delivered by him into the custody of the Director of Corrections at the California State Institution

for Men at Chino, California

for Women at Frontera, California

.....

ENTERED

4-27-92

JAMES DEMSPEY

COUNTY CLERK

AND CLERK OF THE

SUPERIOR COURT

Remaining count(s) dismissed in interests of justice.  
 Bail exonerated.

JUDGMENT

OK'D TO GO SW NOTED  
APR 29 1992 FORM CR 291

## REPORT - INDETERMINATE SENTENCE,

OR OTHER SENTENCE CHOICE ENTERED INTO ORIS

H 33214

SUPERIOR COURT OF CALIFORNIA, COUNTY OF  
COURT ID: 190013, BRANCH 2232382 BK

LOS ANGELES  
SOUTH CENTRAL

PEOPLE OF THE STATE OF CALIFORNIA versus

DEFENDANT: OPALEC, RODERIC

AKA:

REPORT OF:  DEATH SENTENCE  
 INDETERMINATE SENTENCE  
 OTHER SENTENCE CHOICE

AMENDED  
REPORT

CASE NUMBER (S)

TA009295-A  
-B  
-C  
-D  
-E

DATE OF HEARING (MO/DAY/YR)

4-24-92

DEPT. NO

SCR

JUDGE

ROCTIRIA CHAVEZ

CLERK

M. JOHNSON

REPORTER

C ROOM

COUNSEL FOR PEOPLE

E BUNTER

COUNSEL FOR DEFENDANT

R YANES 987.2



PROBATION NO. OR PROBATION OFFICER  
X-1419607

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS)

 ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT (NUMBER OF PAGES)

COUNT	CODE	SECTION NUMBER	CRIME	TYPE OF PUNISHMENT	DATE OF CONVICTION			COMVICTED BY			TIME IMPOSED
					MO	DAY	YEAR	STATE	IN TRIM	IN TRIM	
5	PC	664/187(a)	ATTEMPTED MURDER	90	4	24	92	X			

ENHANCEMENTS (charged and found true) TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC. For each count list enhancement horizontally. DO NOT LIST enhancements charged but not found true or stricken under § 1385. DO NOT LIST TIME imposed.

For indeterminate terms, report enhancements and time imposed for them on the abstract.

Count	Enhancement	PC 12022								
5	12022.5(a)	YES								

ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER.

List all enhancements based on prior convictions of prior prison terms charged and found true 1) or not under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(c) not § 667.5(d) 2 times. DO NOT LIST enhancements not found true. Also enter here any enhancement not prior but in space 2' DO NOT LIST TIME imposed.

For indeterminate terms, report enhancements and time imposed for them on the abstract.

Enhancement	PC 667.5(c)								

 Defendant was sentenced TO DEATH on counts Defendant was sentenced to State Prison for an indeterminate term:

A.  For LIFE, or a term such as 15 or 25 years to life, WITH POSSIBILITY OF PAROLE on counts 5

B.  For LIFE WITHOUT the possibility of parole on counts

C.  For other term prescribed by law on counts (LIFE Terms are on 'A' and 'B.')

 Counts alternate felony/misdemeanors and were DEEMED MISDEMEANORS.A term in jail  was  was not ordered. For counts the defendant was placed on FELONY probation.

A. (1)  Sentence pronounced and execution of sentence was suspended; or  
(2)  Imposition of sentence was suspended.

B. Conditions of probation includid  Jail Time  Fine Other dispositions

A.  Defendant was committed to California Youth Authority.

B.  Proceedings suspended, and defendant was committed to California Rehabilitation Center.

C.  Proceedings suspended, and defendant was committed as a Mentally Disordered Sex Offender.

D.  Proceedings suspended, and defendant was committed as mentally incompetent.

1: PURSUANT TO ARTICLE VI, SECTION 6 OF THE CALIFORNIA CONSTITUTION AND SECTION 68505 OF THE GOVERNMENT CODE, THE CHIEF JUSTICE REQUIRES THAT EACH SUPERIOR COURT SHALL COMPLETE THIS FORM FOR EACH INDETERMINATE SENTENCE TO STATE PRISON OR SENTENCE CHOICE OTHER THAN STATE PRISON.

2: FOR DEATH SENTENCE OR INDETERMINATE SENTENCE, ABSTRACT OF JUDGMENT MUST ALSO BE PREPARED. IT IS NOT SENT TO THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC).

3: IF DEFENDANT IS SENTENCED ON BOTH DETERMINATE AND INDETERMINATE COUNTS, FORM DSL 290 OR 290.1 MUST BE PREPARED AND SENT TO AOC AS WELL AS THIS FORM (AND AN ABSTRACT FOR INDETERMINATE COUNTS THAT IS NOT SENT TO AOC).

4: SIGNATURE  DATE 4-27-92



3 P & S  
 4-24-97 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
 NORABLE: VICTORIA YANES DEPT. SCB  
 JUDGE H. JOHNSON  
 Deputy Sheriff C. LOATY  
 Deputy Clerk  
 Reporter

10. TA 00-9295 (Parties and counsel checked if present)  
 PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:  
 VS. DEPUTY DISTRICT ATTY:  
 02 OPALGE, RODERIC E. HUNTER  
 664/187-A 0107 Counsel for Defendant: R. YANES, 97-1-  
 X. (BOX CHECKED IF ORDER APPLICABLE)

11. OF PROCEEDINGS R35 Rev T-25-90  
 IS SWORN AS THE ENGLISH/ INTERPRETER  
 PUBLIC DEFENDER APPOINTED, D.P.D.  OATH FILED PER SECTION 88580 GOVERNMENT CODE.  
 DUE TO CONFLICT OF INTERESTS, PUBLIC DEFENDER RELIEVED. PURSUANT TO PENAL CODE SECTION 887.2/GOVERNMENT CODE SECTION 31000  
 ALTERNATE DEFENSE COUNSEL  IS APPOINTED.  
 CRIMINAL PROCEEDINGS ADJOURNED/RESUMED.  
 DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PER SECTION 1203.03 PENAL CODE.

12. ON MOTION, PROBATION AND SENTENCE HEARING/FURTHER PROCEEDINGS CONTINUED TO  
 AT A.M. IN DEPT.  SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED  
 DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING.  DEFENDANT ORDERED TO RETURN.

13. PROBATION DENIED / *Probation denied per section 13887 sentence imposed as follows:* *LIFE plus 3 years*  
 IMPRISONED IN STATE PRISON FOR  TERM PRESCRIBED BY LAW *LIFE*  TOTAL OF *LIFE plus 3 years* YEARS  MONTHS  
 COURT SELECTS THE *LIFE* TERM  YEARS/MONTHS FOR THE BASE TERM AS TO COUNT *5*  
 PLUS *3* YEARS/MONTHS PURSUANT TO SECTION *12022.5* OF THE *Penal* CODE  
 PLUS  AS INDICATED BELOW  
 COMMITTED TO CALIFORNIA YOUTH AUTHORITY, THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD  
 HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS  YEARS  
 IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF  DAYS  
 FINED IN SUM OF \$  PLUS ADDITIONAL FINE OF \$  ASSESSMENT AND SURCHARGE (11372.5 HEALTH & SAFETY CODE)  
 TOTAL FINE OF \$  PLUS \$  ASSESSMENT AND SURCHARGE (1464 PC & 76000GC)  
 BE PAID TO COUNTY CLERK.  PAY RESTITUTION FINE IN SUM OF \$ *100.00* PURSUANT TO SECTION 13887(a)  
 GOVERNMENT CODE PAYABLE TO RESTITUTION FUND

7. 14. SENTENCE IS SUSPENDED.  
 PROBATION GRANTED FOR A PERIOD OF  YEARS  PROBATION TO BE WITHOUT FORMAL SUPERVISION.  
 DIVERSION GRANTED PER SECTION 1000.1 PENAL CODE FOR PERIOD OF  YEARS/MONTHS  
 DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL  
 1.  SPEND FIRST  DAYS IN COUNTY JAIL  ROAD CAMP OR HONOR FARM RECOMMENDED  
 2.  WORK FURLOUGH PROGRAM RECOMMENDED.  NOT TO BE ELIGIBLE FOR COUNTY PAROLE  
 3.  FINED IN SUM OF \$  PLUS ADDITIONAL FINE OF \$  (11372.5 HEALTH & SAFETY CODE) FOR A  
 TOTAL FINE OF \$  PLUS \$  ASSESSMENT AND SURCHARGE (1464 PC & 76000GC), TO  
 BE PAID TO PROBATION OFFICER IN SUCH MANNER AS HE SHALL PRESCRIBE  
 4.  MAKE RESTITUTION OF \$  TO THE VICTIM/RESTITUTION FUND PURSUANT TO SECTION 1203.04  
 PENAL CODE IN SUCH MANNER AS THE PROBATION OFFICER SHALL PRESCRIBE.  TOTAL AMOUNT OF RESTITUTION TO  
 INCLUDE  % SERVICE CHARGE AS AUTHORIZED BY SECTION 1203.1 PC  
 5.  PAY RESTITUTION FINE IN SUM OF \$  PURSUANT TO SECTION 13887(a) GOVERNMENT CODE PAYABLE TO  
 PROBATION DEPARTMENT IN SUCH MANNER AS THEY PRESCRIBE.  SAID FINE TO BE STAYED WHILE DEFENDANT PAYS RESTITUTION  
 AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT.

6.  MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$   
 7.  NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.  
 8.  NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID  
 PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE.  
 9.  NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.  
 10.  SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS AS DIRECTED BY THE PROBATION OFFICER. SUCH TESTING TO BE SUSPENDED WHILE THE  
 DEFENDANT IS IN CUSTODY, IS HOSPITALIZED, OR IS IN A RESIDENTIAL DRUG TREATMENT PROGRAM APPROVED BY PROBATION  
 OFFICER.  
 11.  HAVE NO BLANK CHECKS IN POSSESSION. NOT WRITE ANY PORTION OF ANY CHECKS. NOT HAVE BANK ACCOUNT UPON WHICH YOU  
 MAY DRAW CHECKS.  
 12.  NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION, AND NOT BE PRESENT IN  
 PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED.  
 13.  NOT ASSOCIATE WITH   
 14.  COOPERATE WITH PROBATION OFFICER IN A PLAN FOR   
 15.  SUPPORT DEFENDANTS AS DIRECTED BY PROBATION OFFICER   
 16.  SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER   
 17.  MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER   
 18.  SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES.  
 19.  NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED.  
 20.  NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.  
 21.  SUBMIT PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFORCEMENT OFFICER.  
 WITH OR WITHOUT A WARRANT.  
 22.  OBEY ALL LAWS, ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.

23.  DEFENDANT GIVEN TOTAL CREDIT FOR *843* DAYS IN CUSTODY. *562* DAYS ACTUAL CUSTODY AND *281* DAYS GOOD TIME/WORK TIME  
 SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH   
 STAY OF EXECUTION OF  GRANTED TO

24.  ON MOTION OF PEOPLE, COUNTS  DISMISSED IN FURTHERANCE OF JUSTICE.  
 COURT ADVISED DEFENDANT OF HIS APPEAL/PAROLE RIGHTS.  
 "NOTICE RE-CERTIFICATION OF REHABILITATION AND PARDON" GIVEN TO DEFENDANT.  
 DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$   
 COURT FINDS THAT DEFENDANT DOES NOT HAVE THE PRESENT ABILITY TO PAY COSTS OF INCARCERATION/LEGAL SERVICES RENDERED/  
 PROBATION SERVICES RENDERED.  
 DEFENDANT IS REFERRED TO TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION.  
 FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION:

25.  SHERIFF IS ORDERED TO ALLOW DEFENDANT  PHONE CALLS AT DEFENDANT'S OWN EXPENSE  
 DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.  
 BAIL IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL   
 NO BAIL/BAIL FIXED AT \$   
 DEFENDANT APPEARING BENCH WARRANT ORDERED RECALLED/QUASHED  RECALL NO.  WRITTEN  ABSTRACT FILED

STATE OF CALIFORNIA

ARTMENT OF CORRECTIONS

GAL STATUS

C NUMBER	ALPHA ID	NAME	TERM STARTS	ETHNIC
H-33214		OPALEC, Roderic	05-01-92	Fit.
X. RELEASE DATE			MIN. ADJ RELEASE DATE GT CR LOST/AT LARGE/BAIL	PAROLE PERIOD
Be Determined	MEPD: 10-10-99			05 Years

BASE TERM Life +ENHANCEMENTS 03-00 =TOTAL TERM Life + 03-00GOOD TIME CREDITS AVAILABLE (2931 PC) (PC 21 BC 63 ) = 84PRE PRISON CREDITS: CASE NO. LA TA009295

<u>HEARINGS</u>	2900.5 PC <u>562</u>
	1202.03 PC <u></u>
	2900.1 PC <u></u>
INIT: 09/98	CRC <u></u>
LIFE TERM STARTS:	MENTAL HEALTH <u></u>
10-10-1992	4019 PC <u>281</u>
Sub# 1 14/2000	2931 PC <u></u>
Sub# 3 7/2003	POST SENTENCE <u>06</u>

TOTAL PRE PRISON CREDITS (DAYS) 849REGISTRATION REQUIRED PER 8296 30586

STATE	CO. CASE	TYPE	DATE OF	SENTENCE	
EC'D	NO.	CT.	WPN	OFFENSE	DATE

CONTROLLING PRINCIPAL AND CONSECUTIVE (INCLUDING ENHANCEMENT) OFFENSE(S):

15-01-92 LA TA009295	05	P187 Att Murder 1st (Life) P12022.5(A) Use	09-24-90	04-24-92
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DEFENSE ATTORNEY: R. Yanes

INVESTIGATING AGENCY: Los Angeles County Sheriff's Office

NAME OPALEC H-33214  
CDC 188C(1/81)

LPU

06-21-92

LSC:rb

**SOCIAL FACTORS DATED 07/21/92**

<b>PARENTS:</b>	Name	Age	Occupation	Address & Phone #
	Marte Dimapilis (step)		Custodian	827 Silva St. Long Beach, CA (310) 428-4899
	Soledad Dimapilis		Custodian	Same as above

**SIBLINGS:**

Rosemarie Dimapilis

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<b>MARRIAGES:</b>	Name	Date	Status	Address & Phone #
	None			

**NOT LEGALIZED**

None

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<b>CHILDREN:</b>	Name	Age	Living With	Address & Phone #
	None			

**ANY FAMILY FELONY ARREST HISTORY:**

Name	Relationship	Offense(s)	Disposition
None			

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<b>RELIGION:</b>	<b>DRIVER'S LICENSE # &amp; STATUS:</b>	<b>SOCIAL SECURITY #:</b>
Catholic	A3646008	Expires 1992 554-99-5386

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<b>USUAL OCCUPATION:</b>	<b>Last Employer</b>	<b>Address &amp; Phone #</b>
Electrical Assembler	Robinson Helicopter	Torrance, CA

<b>HOME ADDRESS:</b>	<b>Street</b>	<b>City &amp; County/State/ZIP</b>	<b>Phone #</b>
	827 Silva St.	Long Beach CA 90805	428-4899

**NAME & RELATIONSHIP of closest relative living at this home address.**  
Parents

<b>CDC NUMBER:</b>	<b>LAST NAME:</b>	<b>INSTITUTION:</b>	<b>DATE:</b>
H33214	OPALEC	CCI/RC	7/21/92

BB/jd

INSTITUTIONAL STAFF RECOMMENDATION SUMMARY DATED 07/21/92

I/M NAME: OPALEC, RODERIC I/M NO: H33214

SOURCES OF REPORT: Los Angeles County Probation Officer's Report dated 5/24/91, CLETS printout dated 5/4/92, case conference with housing unit officer of 7/6/92, and personal interview of 7/6/92.

CONFIDENTIAL INFORMATION: None on file.

HOLDS/DETAINERS: Active USINS hold, Philippians.

MEDICAL/DENTAL: Full duty and camp.

PSYCHIATRIC/PSYCHOLOGICAL: No referral indicated.

WORK SKILLS: Electrical assembler

NARCOTICS/DRUGS/ALCOHOL: Marijuana and methamphetamines.

ESCAPE HISTORY: None in file and Inmate claims none.

ARSON HISTORY: None in file and Inmate claims none.

SEX-RELATED OFFENSES: None in file and Inmate claims none.

ACADEMIC/VOCATIONAL: Intelligence test scores reflect a grade placement level of 6.9 and a Raven I.Q. of 94.

CASE WORK FOLLOW-UP: Review FBI and CII printouts when available, and adjust classification score accordingly.

EB/jd

**EVALUATION:**

Opalec is a 22-year-old Filipino first termer, committed to CDC from Los Angeles County for the offense of Attempted Murder resulting in a LIFE plus seven (7) year sentence. The essence of the committing offense is that he and other members of the Long Beach Local Boys discussed and agreed to shoot members of the Scotts Royal Brothers Gang. Subsequently they shot at members of the rival gang and struck victim Emery Curamen. He was apprehended as the result of an investigation. Sentence was rendered as the result of a plea. It is noted that the current commitment is the sole reason for his present incarceration.

Available information reflects that Opalec has no known juvenile criminal history. His adult criminal history consists of the instant offense.

During the interview, he was cooperative and answered all questions as directed. It is the opinion of this counselor that he can function in a mainline setting consistent with his classification score. Thus far, during processing through CCI-III, he has experienced no disciplinary actions. Management problems are not anticipated at this time. He was ordered to pay restitution per Los Angeles County.

**RE-ENTRY PLANS:** N/A

**TRANSFER**

**CLASSIFICATION SCORE:** 52

**CUSTODY LEVEL:** IV

**INSTITUTION RECOMMENDATION:** CAL-IV/FOL-IV

**CCF:** Ineligible, due to instant offense.

**AMITY RIGHTURN:** Ineligible, due to classification score.

**RESTITUTION CENTER:** Ineligible, due to instant offense and sentence length.

**REASON FOR OUT-OF-LEVEL PLACEMENT:** N/A

**CORRECTIONAL COUNSELOR:** E. BURTON, CCI-I

**SUPERVISOR'S RECOMMENDATION:** J. HARRIS, CC-II(A); CCI-IV/CAL-IV

**I/M NAME:** OPALEC, RODERIC **I/M NUMBER:** H33214 **DATE:** 07/21/92

EB/jd

CCI-III RC

# **EXHIBIT “C”**

COURT CO<sup>RT</sup>SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

## PROBATION OFFICER'S REPORT

REPORT SEQUENCE NO 1

DEFENDANT'S NAME IS			
RODERIC VILLESESIS OPALEC			
ADDRESS (PRESENT/RELEASE)			
827 SILVA ST. LONG BEACH, CA 90805 428-4899			
BIRTHDATE	AGE	SEX	RACE
12-09-69	21	MALE	FILIPINO
CITIZENSHIP STATUS		DRIVER'S LICENSE-EXP DATE	
		A 3646008	
PROBATION NO	CH NO	BOOKING NO	
X- 1419607	AC9387894	2232382	
DAYS IN JAIL THIS CASE		CUSTODY STATUS/RELEASE DATE	
<input checked="" type="checkbox"/> ESTIMATED <input type="checkbox"/> VERIFIED 238 DAYS		JAIL	

COURT	JUDGE	COURT CASE NO
SC-K	SIMPSON	TA009295-02
HEARING DATE	DEFENSE ATTY	PROSECUTOR
6-06-91	YANES	
DPO	AREA OFFICE	PHONE NO
	SO CENTRAL	213/ 603-7909
BIAS		
TYPE REPORT		
<input type="checkbox"/> Probation and sentence		
<input checked="" type="checkbox"/> Pre-Conviction (131.3 CCP)		
<input type="checkbox"/> Post sentence		
<input type="checkbox"/> Diversion (Specify) _____		

## PRESENT OFFENSE: LEGAL HISTORY

CHARGED with the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

CT I: 182.1 PC (CONSPIRACY, FELONY)

CT II: 664/187(A) PC (ATTEMPTED MURDER, FELONY)

CONVICTED of the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

N/A

## PRE-PLEA REPORT

CONVICTED BY N/A	DATE OF CONVICTION/REFERRAL 5-20-91	COUNT(S) CONTINUED TO P & S FOR DISPOSITION N/A
PROPOSED PLEA AGREEMENT N/A	SOURCES OF INFORMATION N/A	
DATE(S) OF OFFENSE	TIME(S)	
DEFENDANT: <input type="checkbox"/> N-A (SEE PRIOR RECORD SECTION) <input type="checkbox"/> ON PROBATION <input type="checkbox"/> PENDING PROBATION VIOLATION <input type="checkbox"/> ON PAROLE-REMAINING TIME	SENTENCED TO STATE PRISON/COUNTY JAIL ON CASE _____	HOLD/WARRANTS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

## RECOMMENDATION:

<input type="checkbox"/> PROBATION	<input checked="" type="checkbox"/> DENIAL	<input type="checkbox"/> DIAGNOSTIC STUDY	<input type="checkbox"/> CYA	<input type="checkbox"/> OTHER _____
	<input type="checkbox"/> COUNTY JAIL	<input type="checkbox"/> 707.2 WIC		
	<input checked="" type="checkbox"/> STATE PRISON	<input type="checkbox"/> 1203.03 PC		

1 PRESENT OFFENSE:  
2 (CONTINUED)

## 3 SOURCES OF INFORMATION (this page)

## 4 RAP SHEET

5 ARREST DATE	6 TIME	7 BOOKED AS	8 OFFENSE	9 LOCATION OF ARREST	10 ARRESTING AGENCY
10-11-90		RODERIC OPALEC	664/187 (A) PC		LASO

11 CO-DEFENDANT(S)	12 CASE NO.	13 DISPOSITION
ARTHUR FONTILEA		
BENJAMIN OBRIQUE	SAME	SAME
BENEDICT BATO	SAME	SAME
ANDERSON SIMANGAN		
ALEXANDRO CAYAMANO		

## 14 ELEMENTS AND RELEVANT CIRCUMSTANCES OF THE OFFENSE:

15 THE DEFENDANT AND CO-DEFENDANTS WERE ARRESTED FOR  
 16 CONSPIRACY TO COMMIT MURDER AND ATTEMPTED MURDER.

17  
 18 THERE IS NO OTHER INFORMATION AVAILABLE BECAUSE THE  
 19 DISTRICT ATTORNEY'S FILE AND ARREST REPORT WERE NOT MADE AVAILABLE.

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29 -2- (OPALEC)

1 VICTIM:	SOURCES OF INFORMATION (this page)		
2			
3 NAME	COUNT(S)		
4			
5 INJURY: PROPERTY LOSS (TYPE / COST / ETC.)			
6			
7 INSURANCE COVERAGE			
8			
9 LOSS: <input type="checkbox"/> YES <input type="checkbox"/> NO	ESTIMATED LOSS	RESTITUTION ALREADY MADE	APPLIED FOR VICTIM RESTITUTION FUND <input type="checkbox"/> UNK <input type="checkbox"/> YES <input type="checkbox"/> NO

## 10 VICTIM STATEMENT:

11 THERE IS NO INFORMATION REGARDING VICTIM'S STATEMENT  
 12 BECAUSE THE DISTRICT ATTORNEY'S FILE AND ARREST REPORT WERE NOT  
 13 MADE AVAILABLE.

14	15	16	17	18	19	20	21	22	23	24	25
RESTITUTION	TOTAL NUMBER OF VICTIMS	ESTIMATED LOSS TO ALL VICTIMS	VICTIM(S) NOTIFIED OF P&S HEARING <input type="checkbox"/> YES <input type="checkbox"/> NO								
6 DOES DEFENDANT HAVE INSURANCE TO COVER RESTITUTION:  <input type="checkbox"/> YES <input type="checkbox"/> NO	7 INSURANCE COMPANY NAME/ADDRESS/TELEPHONE NO.  8										

9 -3- (OPALEC)

VICTIM LIST CONTINUES NEXT PAGE

1 PRIOR RECORD:

SOURCES OF INFORMATION (THIS PAGE)  
L.A. COUNTY PROBATION; L.A. COUNTY SHERIFF;  
JDS (5-22-91) AND DEFENDANT

2

3 AKA'S: "SPADE"; DENNIS LUBAG MAGTIBAY

4 JUVENILE HISTORY:

5 THERE IS NO JUVENILE HISTORY AVAILABLE.

6 ADULT HISTORY:

7 THE ABOVE SOURCES SHOW NO PRIOR CRIMINAL CONVICTIONS.

8 THE DEFENDANT DENIED ANY CRIMINAL CONVICTIONS.

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-4- (OPALEC)

1 PERSONAL HISTORY:

SOURCES OF INFORMATION (THIS PAGE)

DEFENDANT AND INTERESTED PARTIES

3 SUBSTANCE ABUSE:

4 \_\_\_\_\_ No record, indication, or admission of alcohol or controlled substance abuse.

5 \_\_\_\_\_ Occasional social or experimental use of \_\_\_\_\_ acknowledged.

6  See below: Indication / admission of significant substance abuse problem.

7 Referred to Narcotic Evaluator  Yes  No

8 \_\_\_\_\_ Narcotic Evaluator's report attached

9 Additional information

10 DEFENDANT DENIED THE USE OF ANY ILLEGAL DANGEROUS

11 DRUGS AND REPORTED THAT HE DOES NOT HAVE A DRINKING PROBLEM.

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26 PHYSICAL / MENTAL / EMOTIONAL HEALTH:

27  No indication or claim of significant physical/mental/emotional health problem.

28 \_\_\_\_\_ See below: Indication / claim of significant physical/mental/emotional health problem.

1 PERSONAL HISTORY:  
2 (CONTINUED)

## 3 SOURCES OF INFORMATION (IN THIS PAGE)

## 4 DEFENDANT AND INTERESTED PARTIES

3 RESIDENCE	4 TYPE RESIDENCE	5 LENGTH OF OCCUPANCY	6 MORTGAGE/RENT	7 RESIDES WITH/RELATIONSHIP
	HOUSE	3 YRS	NONE	PARENTS AND SISTER
RESIDENTIAL STABILITY LAST FIVE YEARS		CAME TO STATE / FROM		
GOOD		1987 / PHILIPPINES		

8 Additional information

4 MARRIAGE / PARENTHOOD	5 MARITAL STATUS	6 NAME OF SPOUSE / PRESENT COHABITANT
	SINGLE	NONE
LENGTH OF UNION N/A	NO. OF CHILDREN THIS UNION	SUPPORTED BY
NO. PRIOR MARRIAGES / COHABITATIONS NONE	NO. OF CHILDREN THESE UNIONS	SUPPORTED BY
NO. OF OTHER CHILDREN NONE	SUPPORTED BY	

9 Additional information

## 5 FORMAL EDUCATION:

7 DEFENDANT GRADUATED FROM HIGH SCHOOL AND BALIAUG  
3 COLLEGE IN THE PHILIPPINES. HE COMPLETED SIX MONTHS OF ELECTRONIC  
3 TECH COURSES AT EDISON TECHNICAL COLLEGE IN CARSON AND PLANS TO  
3 EARN A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING.

- 6 - (OPALEC)

1 PERSONAL HISTORY: (CONTINUED)		2 SOURCES OF INFORMATION (THIS PAGE) DEFENDANT AND INTERESTED PARTIES		
3 EMPLOYMENT STATUS		4 <input type="checkbox"/> EMPLOYED <input checked="" type="checkbox"/> UNEMPLOYED	5 REFERRED TO WORK FURLough <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	6 EMPLOYER AWARE OF PRESENT OFFENSE <input checked="" type="checkbox"/> N/A <input type="checkbox"/> YES <input type="checkbox"/> NO
7 PRESENT/LAST EMPLOYER / ADDRESS / PHONE ROBINSON HELICOPTER TORRANCE, CA		8 OCCUPATION ELECTRICAL ASSEMBLER	9 PERIOD OF EMPLOYMENT 7 MOS. LAST WORKED WHEN ARRESTED IN PRESENT OFFENSE	10 GROSS MONTHLY WAGE \$1250
		11 EMPLOYMENT STABILITY LAST 5 YEARS	12 TYPES OF PREVIOUS EMPLOYMENT SAME	
13 <input type="checkbox"/> VERIFIED <input type="checkbox"/> UNVERIFIED				
14 Additional information  DEFENDANT REPORTS THAT HE WORKED APPROXIMATELY 14 MONTHS AS AN ELECTRICAL ASSEMBLER FOR MAGNUS BECK IN COMPTON. DEFENDANT INDICATED THAT HE GOT LAID OFF TWO MONTHS BEFORE HIS ARREST IN THE PRESENT OFFENSE.				
15 FINANCIAL STATUS MARGINAL		16 NET MONTHLY INCOME NONE		
17 PRIMARY INCOME SOURCE FAMILY		18 SECONDARY INCOME SOURCE(S) NONE	19 EST. TOTAL ASSETS \$1000	20 EST. TOTAL LIABILITIES NONE
21 MAJOR ASSETS / ESTIMATED VALUE  1979 MUSTANG FORD VALUED AT \$1000				
22 MAJOR LIABILITIES / ESTIMATED AMOUNT (MONTHLY)  NONE				

23 Additional information

24 GANG ACTIVITY  YES  NO  
-7- (OPALEC)Name of Gang (CONTINUED PAGE 8)

1 GANG ACTIVITY: (CONTINUED)

2 DEFENDANT INDICATED THAT HIS ATTORNEY REQUESTED THAT  
3 HE NOT RELATE ANY INFORMATION REGARDING THIS.

4 PERTINENT PERSONAL HISTORY:

5 THE DEFENDANT WAS REARED BY HIS MATERNAL  
6 GRANDPARENTS IN THE PHILIPPINES. THE DEFENDANT'S FATHER ORLANDO  
7 OPALEC CURRENTLY RESIDES IN THE PHILIPPINES. THE DEFENDANT IS  
8 CURRENTLY RESIDING WITH HIS STEPFATHER AND MOTHER MARTE AND SOLEDAD  
9 (VILLESIS) DIMARIMIS RESPECTFULLY. DEFENDANT'S STEPFATHER AND HIS  
10 MOTHER ARE CUSTODIANS FOR LONG BEACH UNIFIED SCHOOL DISTRICT.

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-8- (OPALEC)

76C692G - PROB. SA

1 DEFENDANT'S STATEMENT:

2 DEFENDANT DID NOT SUBMIT A WRITTEN STATEMENT. ORALLY  
3 THE DEFENDANT STATES THAT HE PLANS TO RETURN TO WORK AND COLLEGE  
4 WHEN HE IS RELEASED FROM CUSTODY. DEFENDANT STATES THAT HE WILL  
5 CONTINUE TO RESIDE WITH HIS PARENTS AND WILL STAY OUT OF TROUBLE.

6 INTERESTED PARTIES:

7 MARTE DIMARIMIS, DEFENDANT'S STEPFATHER, REPORTED  
8 THAT THE DEFENDANT HAS NEVER BEEN A PROBLEM IN THE HOME SETTING,  
9 BUT INDICATED THAT HE MAY HAVE USED DRUGS A SHORT WHILE A COUPLE OF  
10 YEARS AGO. MR. DIMARIMIS INDICATED THAT THE DEFENDANT IS A  
11 NON-VIOLENT INDIVIDUAL AND WILL BE WELCOMED BACK TO THEIR HOME  
12 SETTING WHEN HE IS RELEASED FROM CUSTODY.

13 LAKWOOD SHERIFF'S DEPUTIES REPORTED THAT DEFENDANT  
14 WAS ARRESTED FOR BURGLARY, FEBRUARY 10, 1990, BUT THAT CASE WAS A  
15 DISTRICT ATTORNEY REJECT. THEY REPORTED NO OTHER CONTACT WITH THE  
16 DEFENDANT.

17 EVALUATION:

18 PRESENT OFFENSE REVEALS THAT THE DEFENDANT SHOULD BE  
19 CONSIDERED A THREAT TO THE COMMUNITY IF HE IS CONVICTED OF IT.

20 DEFENDANT WAS COOPERTIVE DURING INTERVIEWS WITH HIM,  
21 HAS ADEQUATE COMMUNITY TIES AND STRONG FAMILY TIES. IT APPEARS  
22 THAT THE DEFENDANT HAS NEVER HAD A PROBLEM SECURING GAINFUL  
23 EMPLOYMENT AND SHOULD BE ABLE TO RETURN TO HIS EMPLOYMENT AND TO

-9- (OPALEC)

1 COLLEGE WHEN HE IS RELEASED FROM CUSTODY. PRESENT OFFENSE APPEARS  
2 TO BE A SITUATIONAL ISOLATED INCIDENT AS THE DEFENDANT HAS NO PRIOR  
3 DIFFICULTY WITH THE AUTHORITIES.

4 SENTENCING CONSIDERATIONS:

5 THE SERIOUS NATURE OF THE ALLEGED CRIME REVEALS THAT  
6 THE DEFENDANT IS PROBABLY NOT ELIGIBLE FOR A GRANT OF FORMAL  
7 PROBATION AND THE COURT MUST DECIDE HIS ELIGIBILITY.

8 CIRCUMSTANCES IN AGGRAVATION:

9 1. THE CRIME INVOLVED GREAT VIOLENCE.

10 MITIGATING CIRCUMSTANCES:

11 1. THE DEFENDANT HAS NO PRIOR RECORD.

12 2. THE DEFENDANT APPEARS TO BE INELIGIBLE BUT IF HE  
13 WAS ELIGIBLE PROBATION MAY HAVE BEEN RECOMMENDED.

14 WHEN CONSIDERING STATE PRISON THE MITIGATING  
15 CIRCUMSTANCES SUGGESTS THE LOW-BASE TERM.

16 RECOMMENDATION:

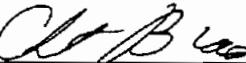
17 IT IS RECOMMENDED THAT IF THE DEFENDANT IS CONVICTED  
18 THAT PROBATION BE DENIED AND THE DEFENDANT BE SENTENCED TO STATE  
19 PRISON WITH PRE-IMPRISONMENT CREDIT OF 238 DAYS PLUS GOOD TIME;  
20 THAT THE COURT ORDER DEFENDANT TO PAY A RESTITUTION FINE OF \$200 AS

21  
22  
23  
-10- (OPALEC)

1 PROVIDED IN SUBDIVISION (A) OF SECTION 13967 OF THE GOVERNMENT  
2 CODE.

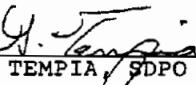
3 RESPECTFULLY SUBMITTED,

4 BARRY J. NIDORF  
5 PROBATION OFFICER

6 BY   
7 CHESTER BIAS, DEPUTY  
8 SOUTH CENTRAL AREA OFFICE  
9 (213) 603-7909

10 READ AND APPROVED:

11 I HAVE READ AND CONSIDERED THE  
12 FOREGOING REPORT OF THE  
13 PROBATION OFFICER.

14   
15 GARY TEMPIA, SDPO

16 (SUBMITTED 5-24091)  
17 (TYPED 5-31-91)  
18 CB:TXRX:JC (8)

19 JUDGE OF THE SUPERIOR COURT

20 IF PROBATION IS GRANTED, IT IS RECOMMENDED THAT THE  
21 COURT DETERMINE DEFENDANT'S ABILITY TO PAY COST OF PROBATION  
22 SERVICES PURSUANT TO SECTION 1203.1B PENAL CODE. COST OF  
23 PRESENTENCE INVESTIGATION AND PRESENTENCE REPORT - \$412.00 COST OF  
SUPERVISION - \$28.00 PER MONTH.

-11- (OPALEC)

76C692G - PROB. 5A

# **EXHIBIT “D”**

123 1676

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS  
(REVISED AUGUST 1998)  
PAROLE CONSIDERATION HEARING  
DECEMBER 2004 LIFER CALENDAR**

**CORRECTIONAL TRAINING FACILITY, SOLEDAD  
DECEMBER 7, 2004**

This is the fourth psychological evaluation for the Board of Prison Terms on inmate Roderick Opalec, CDC# H-33214. This report is the product of a personal interview, conducted on 12/07/04, as well as a review of his Central file and unit health record.

**PSYCHOSOCIAL ASSESSMENT**

**I. IDENTIFYING INFORMATION:**

Inmate Opalec is currently a 35-year-old, single, Filipino male. His stated religious affiliation is Catholic. There were no unusual physical characteristics noted, and he no longer uses any aliases or nicknames.

**II. DEVELOPMENTAL HISTORY:**

Inmate Opalec is an only child who was raised by his grandparents in the Philippines after his parents separated. He denied any history of birth defects, abnormalities of developmental milestones, any history of cruelty to animals or a history of arson, any significant child medical history, childhood history of physical or sexual abuse as either a perpetrator or a victim.

**III. EDUCATIONAL HISTORY:**

Inmate Opalec completed the equivalency of about the ninth grade in the Philippines. In the tenth grade, he dropped out. He came to the United States when he was about 18 years old. He attended a technical school and studied electronics. He completed his GED in 1997 while incarcerated at Lancaster.

**IV. FAMILY HISTORY:**

Inmate Opalec had very little contact with his father. His mother immigrated to America and remarried. When the inmate came to the United States in 1987, he lived with his mother and stepfather.

**V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:**

Inmate Opalec stated that he is a heterosexual male. He denied any history of high-risk sexual behavior or sexual aggression.

OPALEC, RODERICK  
CDC NUMBER: H-33214  
BPT PSYCHOLOGICAL EVALUATION  
PAGE TWO

**VI. MARITAL HISTORY:**

Inmate Opalec has never been married, and has no children.

**VII. MILITARY HISTORY:**

The inmate denied any history of military service.

**VIII. EMPLOYMENT/INCOME HISTORY:**

Unusual for this age of an incarcerated young man, this inmate started working after he quit school, and that was at the age of 18, when he had two jobs. He was working as an electronic assembler, and he also did the same job at a different place. One job he had for two years, and the second job he had for a year and a half.

**IX. SUBSTANCE ABUSE HISTORY:**

Inmate Opalec started using marijuana at the age of 16 approximately twice a week, and then from the age of 18 on, he had been using methamphetamines on weekends.

In terms of self-help since his incarceration, he has now attended Alcoholics Anonymous Narcotics Anonymous for 12 years. He has completed the Victims' Impact Program. He has completed the Fatherhood Program. He has completed a class in business, another class in FEMA, and he is currently finishing a segment of self-help called Criminon.

**X. PSYCHIATRIC AND MEDICAL HISTORY:**

Inmate Opalec has no prior diagnosis of any psychiatric illness. He denied any history of medical or psychiatric hospitalizations, any history of serious accidents or head injuries, any history of suicidal behavior, or a history of seizures or other neurological conditions. He is currently taking medication for high blood pressure.

**XI. PLANS IF GRANTED RELEASE:**

When inmate Opalec is given a parole date, he states that he will be deported back to the Philippines. In this case, he has planned to work at his aunt's grocery store, and live with family members there. The inmate believes he will do well on parole.

OPALEC, RODERICK  
CDC NUMBER: H-33214  
BPT PSYCHOLOGICAL EVALUATION  
PAGE THREE

CLINICAL ASSESSMENT

**XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:**

Inmate Opalec appears younger than his stated age of 40. He was appropriately dressed and groomed. He was coherent, cooperative, calm, and alert throughout the interview. His speech, flow of thought, and affect were all within the normal range. His intellectual functioning was estimated to be within the average to above average range. There was no evidence of a mood or thought disorder. His judgment appeared to be intact. He showed good insight into his commitment offense.

**CURRENT DIAGNOSTIC IMPRESSIONS (DSM-IV):**

**AXIS I:** No contributory clinical disorder.  
**AXIS II:** No contributory personality disorder.  
**AXIS III:** No contributory physical disorder.  
**AXIS IV:** Long-term incarceration.  
**AXIS V:** Current GAF = 80.

When given a release date, this inmate's prognosis for the ability to maintain his current mental status in the community upon parole is excellent.

**XIII. REVIEW OF LIFE CRIME:**

In this section, pertinent information specifically requested by the Board of Prison Terms will be addressed. The BPT form 1000A, section 11, part three, states as follows:

"The panel's belief that the prisoner's current mental health is an important issue."

In the new, full evaluation, the panel requests that the clinician specifically address the following:

- a. The prisoner's violence potential in the free community.
- b. The significance of alcohol and drugs as it related to the commitment offense, and an estimate of the prisoner's ability to refrain from use and abuse of same when released.
- c. The extent to which the prisoner has explored the commitment offense, and come to terms with the underlying causes.
- d. The need for further therapy programs while incarcerated.

These issues will be addressed in that same order.

**OPALEC, RODERICK**  
**CDC NUMBER: H-33214**  
**BPT PSYCHOLOGICAL EVALUATION**  
**PAGE FOUR**

In the Board's last transcript, on line 25, it states that the previous board report by Dr. Gamard was not supportive of this inmate's release.

This was due to the fact that Dr. Gamard wrote in his estimation under Assessment of Dangerousness, 14-b, that if released to the community, his violence potential was estimated to be no more than somewhat higher than the average citizen within the community. Dr. Gamard is being literal, and this is my belief system, because Dr. Gamard is not performing this evaluation.

It is my belief that this language was used to convey how any ethical and responsible clinician would judge any person who has been to prison when compared to someone in the community who has never been prison. When you put those two side to side, one would have to say that the person who has been to prison is a somewhat higher risk. This does not mean that there are researchable, historical, or clinical factors which prove out that this inmate is more dangerous than anyone else within the community.

3-B. "The significance of alcohol and/or drugs as it relates to the commitment offense, and an estimate of the prisoner's ability to refrain from the use or abuse of same when released."

Inmate Opalec has attended 12 years of Alcoholics Anonymous and Narcotics Anonymous. He has been incarcerated for 14 years. He has never received so much as a 128. He has truly been a model prisoner. The idea that he could return to the use of alcohol and drugs, as is anybody else, is up to him. However, history and length of time of sobriety coupled with a lack of disciplinary or other issues that would lead one to believe that this is still a problem leads this clinician to believe it is a situation which has been thoroughly thought through, and is no longer an issue.

3-D. "The extent to which the prisoner has explored the commitment offense and come to terms with the underlying causes."

At this point, I will discuss what would normally be the section, Review of Life Crime. As written in previous reports, inmate Opalec states that he came from the Philippines, he was 17 years old, and he had problems adjusting to a different culture and a different language. He didn't speak English, and the only other kids that were his age and from his culture were these kids who were in a gang. The inmate states that he was trying to fit in. Additionally, he had a new stepfather, and his parents were not aware of the extent that his friends were involved in this gang. When his parents did find out, he stated they were very disappointed, because his mother had brought him to this country to have a better life.

One other issue which lends credence to this inmate's story is the fact that he held jobs—he held two different jobs at the very young age of 18, and

OPALEC, RODERICK  
 CDC NUMBER: H-33214  
**BPT PSYCHOLOGICAL EVALUATION**  
**PAGE FIVE**

besides the commitment offense, he has no criminal history. Since he has been arrested for this crime and incarcerated, he has no criminal history, no disciplinaries.

In the last Board of Prison Terms report, on page two in the transcript, lines 13 and 14, it states that this inmate did not luckily, and he very much understands luckily, but no one was hurt in this crime. The inmate has explored on a deep level the factors which led to the commitment offense, and those were, specifically, his developmental age, the adjustment problems of moving from the Philippines, the need to belong, and his desire for these guys to like him. This is very insightful on the part of the inmate. He understands that it was wrong. He understood that it was wrong very soon after the crime. There is no other causes that need exploration.

3-E. "The need for further therapy programs while incarcerated." As previously noted, this inmate has done every self-help program available to him, and some that were not. There are no other programs this inmate needs to continue if the end result is to further explore the underlying causes of his commitment offense, that task has been completed.

#### XIV. ASSESSMENT OF DANGEROUSNESS:

- A. Since the last Board of Prison Terms report, this inmate has continued to be disciplinary-free during his entire incarceration. Therefore, it is believed that he would pose less than an average risk for violence when compared to this level II inmate population.
- B. If released to the community after 14 years, other clinical and historical factors, this inmate's violence potential is now estimated to be no more than the average citizen within the community at this time.
- C. The inmate's only significant risk factor would be a return to the use of amphetamines or marijuana, or a return to any type of gang affiliation.

#### XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

1. This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards, and has done so during his entire incarceration period.
2. This inmate does not have a mental health disorder which would necessitate treatment either during his incarceration period or following parole.

OPALEC, RODERICK  
CDC NUMBER: H-33214  
BPT PSYCHOLOGICAL EVALUATION  
PAGE SIX

3. Inmate Opalec has programmed very well. His behavior has been exceptional in prison, and there does not appear to be any specific reason for continued incarceration.

*M. E. Gleason, Ph.D.*

**M. E. Gleason, Ph.D., FSICPP**  
Staff Psychologist  
Board Certified Diplomate, Forensic Psychology  
Correctional Training Facility, Soledad

*B. Zika, Ph.D.*

**B. Zika, Ph.D.**  
Senior Supervising Psychologist  
Correctional Training Facility, Soledad

MEG/gmj

D: 12/07/04  
T: 12/10/04

*D:\Word Files\BPT - 2004\BPT REPORT - GLEASON, MARTHA PH.D..doc*

MENTAL HEALTH EVALUATION FOR THE BOARD OF PRISON TERMS  
(REVISED AUGUST 1998)  
PAROLE CONSIDERATION HEARING  
JULY 2002 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD  
APRIL 10, 2002

Inmate Roderic Opalec, CDC# H-33214, was seen for a mental health evaluation for the Board of Prison Terms by W. Gamard, Ph.D., Staff Psychologist at CTF, on 11/17/00 for the November 2000 Lifer Calendar.

According to the instructions given to Wardens and Health Care Managers by Steven Cambra, Jr. (CDC), and G. Lewis Chartrand, Jr. (BPT) in September 1998, once a mental health evaluation is completed in the new format (revised in August 1998), a new evaluation is not necessary when an inmate appears before the Board of Prison Terms unless the BPT has filed a BPT 1000A request for a new report.

Since there is no BPT 1000A request on file, a mental health evaluation was not conducted at this time.

*Bil 3, Ph. D.*

B. ZIKA, Ph.D.  
Senior Supervising Psychologist  
CORRECTIONAL TRAINING FACILITY, SOLEDAD

BZ/gmj

D: 04/10/02  
T: 04/10/02

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS  
PAROLE CONSIDERATION HEARING  
NOVEMBER 2000 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD  
NOVEMBER 17, 2000

This is the third psychological evaluation for the Board of Prison Terms on inmate Roderic Opalec, CDC# H-33214. This report is the product of a personal interview, conducted on 11/17/00, as well as a review of his Central file and unit health record.

PSYCHOSOCIAL ASSESSMENT

**I. IDENTIFYING INFORMATION:**

Inmate Opalec is a 30-year-old, single, Filipino male. His stated religious affiliation is Catholic. There were no unusual physical characteristics noted. He has gone by the nickname of "Spade."

**II. DEVELOPMENTAL HISTORY:**

Inmate Opalec is an only child who was raised by his grandparents in the Philippines. He denied any history of birth defects or abnormalities of developmental milestones, any history of cruelty to animals or a history of arson, any significant childhood medical history, or a childhood history of physical or sexual abuse as either a perpetrator or a victim.

**III. EDUCATIONAL HISTORY:**

Inmate Opalec completed the equivalency of about the ninth grade in the Philippines. In the equivalent of tenth grade, he dropped out. He came to the United States when he was about 18. He went to technical school and studied electronics. He eventually completed his GED while incarcerated.

**IV. FAMILY HISTORY:**

Inmate Opalec had very little contact with his father. His mother had immigrated to America and remarried. When he came to the United States in 1987, he lived with his mother and his stepfather.

OPALEC, RODERIC  
CDC NUMBER: H-33214  
BPT PSYCHOLOGICAL EVALUATION  
PAGE TWO

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Inmate Opalec stated that he is a heterosexual male. He denied any history of sexual aggression.

VI. MARITAL HISTORY:

Inmate Opalec has never been married and denies having any children.

VII. MILITARY HISTORY:

The inmate denied any history of military service.

VIII. EMPLOYMENT/INCOME HISTORY:

Prior to his incarceration, inmate Opalec worked as an electrical assembler for two jobs--the first job for two years, and the second job for one and a half years.

IX. SUBSTANCE ABUSE HISTORY:

Inmate Opalec started using cannabis at the age of 16 twice a week, and from age 18 on he used methamphetamines rather regularly on weekends. He has been attending Alcoholics Anonymous and Narcotics Anonymous most of the time during his incarceration.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Inmate Opalec has no prior diagnoses of any psychiatric illness. He denied any history of medical or psychiatric hospitalizations, any history of serious accidents or head injuries, a history of suicidal behavior, or a history of seizures or other neurological conditions. He is currently taking no medications.

XI. PLANS IF GRANTED RELEASE:

Should inmate Opalec be given a parole date, he states that he expects that he will be deported back to the Philippines, in which case he would work at his aunt's grocery store and live with family members there.

OPALEC, RODERIC  
CDC NUMBER: H-33214  
BPT PSYCHOLOGICAL EVALUATION  
PAGE THREE

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Inmate Opalec appeared his stated age of 30. He was appropriately dressed and groomed. He was coherent, cooperative, calm and alert. His speech, flow of thought and affect were all within the normal range. His intellectual functioning was estimated to be within the average range. There was no evidence of a mood or thought disorder. His judgment appeared to be intact. He showed good insight into his commitment offense.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: Amphetamine Dependence, in institutional remission.  
AXIS II: No Contributory Personality Disorder.  
AXIS III: No Contributory Physical Disorder.  
AXIS IV: Incarceration.  
AXIS V: GAF = 80.

If given a release date at this time, this inmate's prognosis for being able to maintain his current mental state in the community upon parole is excellent.

XIII. REVIEW OF LIFE CRIME:

Inmate Opalec described the circumstances surrounding his commitment offense. He states that he was very young, not thinking right, and got involved with the wrong crowd. He states that he takes full responsibility for his actions. He regrets getting carried away with identifying with the pressures of a gang.

He accepts that, although he admits to shooting at an enemy gang member in a drive-by shooting, that even though no one was killed, there was one man of the two fired at who was injured. He understands that the penalty for drive-by shootings is very severe. He admits that the shooting was premeditated, that the enemy gang had shot at their gang, and that they wanted to get even.

This inmate appears to have matured considerably since his age at the time of the crime and has become

OPALEC, RODERIC

CDC NUMBER: H-33214

BPT PSYCHOLOGICAL EVALUATION

PAGE FOUR

adequately insightful, not only of his own deficits, but to the causality of criminal behavior and, in particular, this crime.

**XIV. ASSESSMENT OF DANGEROUSNESS:**

- A. This inmate has not received any CDC-115 violations during his entire incarceration. Therefore, it is felt that he would pose a less than average risk for violence when compared to this Level II inmate population.
- B. If released to the community, his violence potential is estimated to be no more than somewhat higher than the average citizen in the community.
- C. His only significant risk factors which would be a precursor to violence for this inmate would be a return to amphetamine abuse and dependence, or a return to gang affiliation.

**XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:**

- A. This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards and has done so during his incarceration period.
- B. This inmate does not have a mental health disorder which would necessitate treatment either during his incarceration period or following parole.
- C. This inmate has programmed very well and his behavior has been very good in prison.

*William Gamard, Ph.D.*

WILLIAM GAMARD, Ph.D.  
Clinical Psychologist  
Correctional Training Facility, Soledad

WG/gmj

D: 11/17/00

T: 11/30/00

# **EXHIBIT “E”**

LIFE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
JANUARY 2006 CALENDAR

OPALEC, RODERIC

H33214

I. COMMITMENT FACTORS:

A. Life Crime: Attempted Murder 1<sup>st</sup>, PC 187 (a) With Deadly Weapon (handgun), PC 12022.5(a) Count 5, Los Angeles County Case Number TA009292. Sentence: Life plus an enhancement of three years. MEPD: 10/10/99. Date received into CDC: 5/1/92. Victims: Caesar Jacinto, age 19 years, and Emery Curainen, age 18 years.

1. Summary of Crime: On 9/24/90, Opalec, along with co-defendants Cayamonda, Simangun, Fontilea, Obrique and Bato, all of whom were members of the Long Beach Loco Boy's, agreed to retaliate against members of the Scott Royal Brothers gang. The group split up into two vehicles and drove to Carson City, California. Two members of the Scott Royal brothers were fired upon 23421 South Main Street in Carson City. The two victims were not killed in the drive-by attack. There is no documentation as to the seriousness of their injuries in the POR. (POR page 2-7).
2. Prisoner's Version: Remains the same as indicated in his previous report. Opalec stated that he has nothing further to add.

3. Aggravating/Mitigating Circumstances:

a. Aggravating Factors:

- The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime. The crime involved a drive-by shooting with the Loco Boy's gang and the Scott Royal Beach gang.
- During the commission of the crime the prisoner had a clear opportunity to cease but instead continued. Opalec fired two shots at the victim (Bato).

b. Mitigating Factors: The inmate has no prior arrest history.

B. Multiple Crime(s):

LIFE PRISONER EVALUATION REPORT  
 SUBSEQUENT PAROLE CONSIDERATION HEARING  
 JANUARY 2006 CALENDAR

2

1. Summary of Crime: N/A.

2. Prisoner's Version: N/A.

**II. PRECONVICTION FACTORS:**

- A. Juvenile Record: There is no juvenile record noted.
- B. Adult Convictions and Arrests: Opalec's criminal record consists of a 2/10/90 arrest for Burglary, which the District Attorney rejected.
- C. Personal Factors: Opalec is the only child born on 12/9/69, to Soledad Dimapolis (mother) and Orlando Opalec. Opalec's father whom he has had no contact with, resides in the Philippines. Opalec came to the United States in 1987 from the Philippines, where he had been living with his grandparents. In the United States, Opalec resided with his mother and step-father who both worked as custodians for the Long Beach Unified School District at the time of his arrest. No other family members are noted as having been in trouble with the law enforcement or the court system. Opalec states that he completed the 10<sup>th</sup> grade in the Philippines and completed six months of the Electrical Technician course at Edison Technology College in Carson, California. Opalec was laid off for two months prior to the instant offense. He had been working for Magnus Beck in Compton as an electrical assembler. He has never been married and has fathered no children. His prior drug use consists of marijuana and cocaine. Gang affiliation is noted as Long Beach Satalas with an aka of "Spade". The instant offense involved Opalec and members of the Long Beach Locos. There is no history of sexual deviation, mental disorder or medical problems. Opalec has had no criminal record prior to the instant offense. (Source Document: POR pages 6-7; ISRS, 128 dated 5/4/19, Psychiatric Evaluation dated 10/11/95).

**III. POSTCONVICTION FACTORS:**

- A. Special Programming/Accommodations: None.
- B. Custody History: Opalec remained at CTF in the general population with Medium A custody. He is currently assigned to the PIA as Machine Operator in Shop 4.
- C. Therapy and Self-Help Activities: Opalec continues his participation in the Alcoholics Anonymous program.
- D. Disciplinary History: Opalec has remained disciplinary free during his entire incarceration.

LIFE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
JANUARY 2006 CALENDAR

E. Other: On 3/22/05, Opalec appeared before The Board of Prison Terms the BPT made the following decisions/recommendations: They denied parole for one year and recommended that he remain disciplinary free, continue his participation in self help programs and obtain support letters.

IV. FUTURE PLANS:

- A. Residence: If parole is granted, Opalec wishes to reside with his mother, Soledad Dimapolis who lives at:  
Coastal Home Subdivision  
Munting Mapino  
Naic Cavite, P.I. (No Phone).
- B. Employment: Opalec stated that Concordia V. Seballe has offered him employment at the "Tins Metals for Export" Shop, letter dated 6/15/04. The address is,  
Bo. Road Tayuman  
Bi Nango Nan Rizal  
Philippines.
- C. Assessment: Opalec has remained disciplinary free during his entire incarceration. He has his GED and completed two vocations.

V. USINS STATUS: Opalec has an active USINS hold, #A41159616.

VI. SUMMARY:

- A. Prior to release the prisoner could benefit from: remaining disciplinary free, continuing self-help programs, and earning positive chronos.
- B. This report is based upon an interview with the prisoner on 9/8/05, lasting approximately 30 minutes, and a complete review of his Central File lasting approximately 2 hours.
- C. Opalec was afforded an opportunity to examine his Central File on 9/18/05 per the Olsen Decision. On 9/8/05, he reviewed his Central File.
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
JANUARY 2006 CALENDAR

4

J. Palmer 9/22/05  
J. Palmer Date

Correctional Counselor I

R. Leach 9/22/05  
R. Leach Date

Correctional Counselor II

R. Pope 9-22-05  
R. Pope Date

Facility Captain

D. S. Levorse, C.R.P. 9-23-05  
D. S. Levorse Date

Classification and Parole Representative

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

DOCUMENTATION HEARING  
 PAROLE CONSIDERATION HEARING  
 PROGRESS HEARING

## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
1/7/05 to 9/7/05 (Present)			<p><b>PLACEMENT:</b> He remained at CTF and housed among the general population.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None.</p> <p><b>ACADEMICS:</b> Opalec enrolled in the Criminon West U.S. (Correspondence Course Way to Happiness), and completed lessons 1-10. He received grades of 100%, dated 11/19/03, 1/5/04, 2/16/04, and 3/26/04. On 6/18/05, he completed the "Way to Happiness" course and received a certificate. Opalec completed 2 courses Animals in Disaster, Awareness and Preparedness and Animals in Disaster, Community Planning. He received certificates dated 3/15/04.</p> <p><b>WORK RECORD:</b> He remained assigned to the PIA as a Machine Operator and received satisfactory to exceptional work grades for his performance, per CDC 101's dated 10/1/03, 1/1/04, 4/1/04, 7/1/04, 10/1/04, 4/1/05 and 7/1/05. Supervisory comments: Opalec does an excellent job! He is a very good worker, and is very helpful in other areas.</p> <p><b>GROUP ACTIVITIES:</b> Opalec received several 128-B chronos for attending the Alcoholics Anonymous Program from April-June of 2004; one of three meetings for the 4<sup>th</sup> Quarter of November 2004; the 1<sup>st</sup> Quarter of 2005 (January, February, March); and two out of three meetings for the 1<sup>st</sup> Quarter of January through March 2005, per CDC chronos dated 1/18/05, 2/15/05, 3/15/05, and 4/18/05. He attended a Monday Narcotics Anonymous Central B Group for the 2<sup>nd</sup> Quarter (April, May, June 2005), per 128-B dated 6/28/05.</p> <p><b>PSYCH. TREATMENT:</b> None.</p> <p><b>PRISON BEHAVIOR:</b> He has remained disciplinary free during his entire incarceration.</p> <p><b>OTHER:</b> None.</p>

CORRECTIONAL COUNSELOR'S SIGNATURE

OPALEC, RODERIC

H33214

DATE

9/22/05

CTF-SOLEDAD

JAN/2006

BOARD OF PRISON TERMS

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

STATE OF CALIFORNIA

DOCUMENTATION HEARING  
 PAROLE CONSIDERATION HEARING  
 PROGRESS HEARING

## ADDENDUM

## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
5/04 to Present			<b>PLACEMENT:</b> CTF. <b>CUSTODY:</b> Medium A. <b>VOC. TRAINING:</b> None. <b>ACADEMICS:</b> None. <b>WORK RECORD:</b> Assigned to PLA Wood Products. <b>GROUP ACTIVITIES:</b> None. <b>PSYCH. TREATMENT:</b> None. <b>PRISON BEHAVIOR:</b> Remained positive. <b>OTHER:</b> None.

CORRECTIONAL COUNSELOR'S SIGNATURE

OPALEC, RODERIC

H33214

CTF-SOLEDAD

DATE

1-6-05

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM

M. Rubio 1-6-05  
M. Rubio Date  
Correctional Counselor I

J. L. Sareli, CCT(A) 1-6-05  
J. L. Sareli Date  
Correctional Counselor II

J. L. Clancy 1-6-05  
J. L. Clancy Date  
Facility Captain

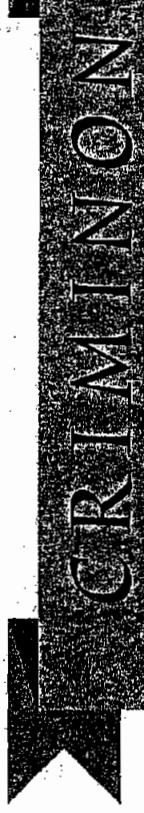
D. S. Levorse C&PR 1-6-05  
D. S. Levorse Date  
Classification and Parole Representative

OPALEC, RODERIC

H33214

CTF-SOLEDAD

# **EXHIBIT “F”**



"There is no person alive who cannot make a new beginning."

— The Way to Happiness

Does hereby certify that

Roderick Opalec

*Has satisfactorily attained the requirements necessary and is hereby awarded a Certificate of Completion of*

*The Way To Happiness Course*

This 18 day of June 2005 Certificate # 8136

Tracie J.

Extension Course Supervisor

Bob Veach

CRIMINON Executive Director

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And Education and is used with its permission

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The L. Ron Hubbard Library and is used with its permission  
© 2000 The Way To Happiness Foundation  
All Rights Reserved. - Printed In USA

# *Certificate of Completion*

*Awarded to:*

**R. Opalec**

*On this 23rd day of February 2006 for faithfully completing  
the "Healing For The Angry Heart" video series in:*

## **ANGER MANAGEMENT**

*He has acquired the skills through practical biblical insights  
to deal with heart issues, discovered the secret to being heard,  
learned to release guilt, trust again and break habit cycles.*

*Richard Wires*  
**Richard Wires**  
Education Deacon  
CTF Central Chapel

*Judge C. Lindsey*  
**Judge C. Lindsey**  
Protestant Chaplain  
CTF Triplex Facility

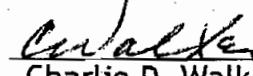
NAME and NUMBER OPALEC, RODERICK, H33214Housing ED-036U

CDC-128B (Rev. 4/74)

Inmate OPALEC has successfully completed the third phase of our **Inmate Employability Program**, "Finding Employment: The First Step for the Ex-Offender to Making it on the Outside." In addition to reviewing issues related to "Reengaging in Society" and "The Four Phases of Community Reentry," he has now received instructions on job searching while incarcerated, interview tips, networking to find employment, and accessing community resources related to finding employment. With employment being a prerequisite for parole, it is paramount for ex-offenders to have the ability to effectively access employment resources. With the completion of this phase of our program, inmate OPALEC's chance of finding gainful employment upon release is excellent. He is commended for his diligence and participation in our **Inmate Employability Program**.

Orig: Central File  
 cc: Personnel File  
 Inmate  
 DATE 4/7/2006

**Finding Employment**  
**Inmate Employability Program**  
**Laudatory**

  
 Charlie D. Walker  
 Superintendent I/IEP Coordinator  
 Prison Industry Authority - CTF  
**GENERAL CHRONO**

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CDC-128-B (Rev. 4/74)

NAME and NUMBER OPALEC, R. H33214 ED-036U

You attended meetings for the Monday NA Central B Group for the 1st Quarter (Jan, Feb, Mar) 2006. Since you began, you provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following 'The 12 Steps of Recovery' in your life, you can show your willingness to improve yourself.

Elected Position: None

  
 J. Kramer  
**Group Staff Sponsor**

Original : Central File  
 cc: Staff Sponsor  
 : Inmate

DATE: 4/10/06

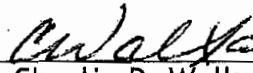
**Monday NA Central B -LAUDATORY CHRONO**NAME and NUMBER OPALEC, RODERICK, H33214 Housing ED-036U

CDC-128B (Rev. 4/74)

Inmate OPALEC has voluntarily participated in three (3) hours of **Inmate Employability Program** video review and dialogue of issues related to Anger Management. These issues include, but are not limited to: violent thinking vs. nonviolent thinking, reducing emotional levels of anger, and identifying the fears that drive anger. Understanding how the "continuum of fear" can lead to violence; and ultimately involvement in the Criminal Justice System. In this video, Carl Reddick, Instructor on Cognitive Programming at the Oregon Police Academy, impresses on participants, strategies to help understand that "anger is an emotion, not a behavior." These strategies, which include evaluating your own belief system, identifying the fears that drive your emotions, determining your place in the world, being personally accountable for your actions, beliefs and behaviors, and owning your own problems, have proven to be corner stones of building productive citizens in society. With these strategies, it is my opinion that inmate OPALEC is now capable of understanding anger. He is commended for his efforts to become a productive citizen.

Orig: Central File  
 cc: Personnel File  
 Inmate  
 DATE April 5, 2006

**Anger Management**  
**Inmate Employability Program**  
**Laudatory**

  
 Charlie D. Walker  
 Superintendent I/IEP Coordinator  
 Prison Industry Authority - CTF  
**GENERAL CHRONO**

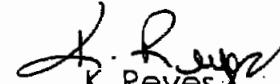
Name: OPALEC, R

CDC# "33214

"Tuesday B Group"

CDC-128-B (Rev. 2/69)

Mr. OPALEC, R has been attending the Alcoholics Anonymous Program at the Correctional Training Facility – Central for the quarter of: **July – September 2005**. MR. OPALEC, R has attended 0 of 3 meetings for the 3rd quarter. He has shown the ability to relate with the Group and to improve himself by involvement with the group. His participation in this program has demonstrated a willingness to cooperate in the smooth atmosphere of the Alcoholics Anonymous environment.



K. Reyes

Staff Sponsor, Central

DATE: October 12, 2005

Original: Central File  
 cc: Inmate  
 Sponsor

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CDC-128-B (Rev.4/74)

NAME and NUMBER

OPALEC, R.

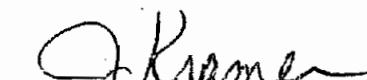
H33214

ED-036U

You attended meetings for the Monday NA Central B Group for the 3rd Quarter (July, August, September) 2005. You have actively participated in this Group. You provide service and input to the Group with your attendance. Through this program, you are shown what tools are available to you. By following 'The 12 Steps of Recovery' in your life, you show your willingness to improve yourself.

You have been a participant at CTF since: 09-24-2003

Elected Position: None



J. Kramer

Group Staff Sponsor

Original : Central File

cc: Staff Sponsor

: Inmate

DATE: 10/17/05

Monday NA Central B -LAUDATORY CHRONO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CDC-128-B (Rev.4/74)

NAME and NUMBER

OPALEC, R.

H33214

ED-036U

You attended meetings for the Monday NA Central B Group for the 4th Quarter (Oct, Nov, Dec) 2005.

Since you began, you provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following 'The 12 Steps of Recovery' in your life, you can show your willingness to improve yourself.

Elected Position: None



J. Kramer

Group Staff Sponsor

Original : Central File

cc: Staff Sponsor

: Inmate

DATE: 1/23/06

Monday NA Central B -LAUDATORY CHRONO

Name: OPALEC, R CDC# 33214 "Tuesday B Group" CDC-128-B (Rev. 2/69)

Mr. OPALEC, R has been a member of the Alcoholics Anonymous Program at the Correctional Training Facility – Central for the quarter of: January - March 2005. MR. OPALEC, R has attended 2 of 3 meetings for the 1<sup>st</sup> quarter. He has shown the ability to relate with the Group and to improve himself by involvement with the group. His participation in this program has demonstrated a willingness to cooperate in the smooth atmosphere of the Alcoholics Anonymous environment.



Kathy Reyes  
Staff Sponsor, Central

DATE: April 18, 2005

Original: Central File  
cc: Inmate  
Sponsor

4/18/05

STATE OF CALIFORNIA

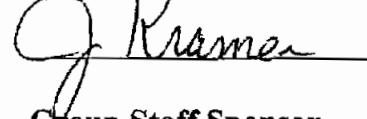
DEPARTMENT OF CORRECTIONS  
CDC-128-B (Rev.4/74)

NAME and NUMBER OPALEC, R H33214 ED-036U

You attended meetings for the Monday NA Central B Group for the 2nd Quarter (April, May, June) 2005. Since you began, you provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following 'The 12 Steps of Recovery' in your life, you can show your willingness to improve yourself.

You have been a participant at CTF since: 09-24-2003

Elected Position: None



J. Kramer

Group Staff Sponsor

Original : Central File  
cc: Staff Sponsor  
: Inmate

DATE: 6/28/05

Monday NA Central B -LAUDATORY CHRONO

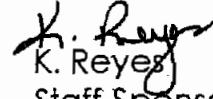
Name: OPALEC, R CDC# H3214 "Tuesday B Group" CDC-128-B (Rev. 2/69)

CDC# H3214

Mr. OPALEC, R has been attending the Alcoholics Anonymous Program at the Correctional Training Facility – Central for the quarter of: April - June 2005. MR. OPALEC, R has attended 1 of 3 meetings for the 2<sup>nd</sup> quarter. He has shown the ability to relate with the Group and to improve himself by involvement with the group. His participation in this program has demonstrated a willingness to cooperate in the smooth atmosphere of the Alcoholics Anonymous environment. No meeting held for the month of May 2005, due to the following: Lockdown, 1<sup>st</sup> watch status.

DATE: August 16, 2005

Original: Central File  
cc: Inmate  
Sponsor



K. Reyes  
Staff Sponsor, Central

Name: OPALEC

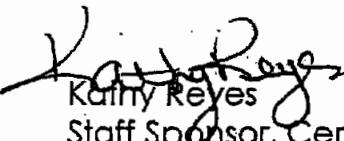
CDC# H-33214

CDC-128-B (Rev. 2/69)

Mr. OPALEC has been a member of the Alcoholics Anonymous Program at the Correctional Training Facility - Central for the quarter of April - June 2004. MR. OPALEC has attended 3 of 3 meetings for the 2nd quarter. He has shown the ability to relate with the Group and to improve himself through involvement with it. His participation in this program has demonstrated a willingness to cooperate in the smooth atmosphere of the Alcoholics Anonymous environment.

DATE: January 18, 2005

Original: **Central File**  
 cc: Inmate  
     Sponsor

  
 Kathy Reyes  
 Staff Sponsor, Central

Name: Opalec, R CDC# H33214 "Tuesday B Group"

CDC-128-B (Rev. 2/69)

Mr. Opalec, R has been a member of the Alcoholics Anonymous Program at the Correctional Training Facility - Central for the quarter of November 2004. MR. Opalec, R has attended 1 of 3 meetings for the 4th quarter. He has shown the ability to relate with the Group and to improve himself through involvement with it. His participation in this program has demonstrated a willingness to cooperate in the smooth atmosphere of the Alcoholics Anonymous environment. No meetings held for the month of October & December, due to the following Lockdown, 1st Watch Statues or Sponsor illness.

DATE: February 15, 2005

Original: **Central File**  
 cc: Inmate  
     Sponsor

  
 Kathy Reyes  
 Staff Sponsor, Central

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS  
CDC-128-B (Rev. 4/74)

NAME and NUMBER

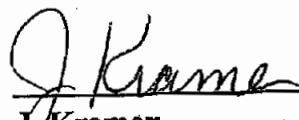
OPALEC, R

H33214

ED-036U

You attended meetings for the Narcotics Anonymous B Group for the 1st Quarter 2005 (January, February, and March). You provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following "The 12 Steps of Recovery" in your life, you can show your willingness to improve yourself.

Original : Central File  
 cc: Staff Sponsor  
     : Inmate

  
 J. Kramer  
 NA Staff Sponsor  
 CTF-Central Facility

# **EXHIBIT “G”**

Court of Appeal, Second Appellate District, Div. 2 - No. B200537  
**S159881**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re RODERIC OPALEC on Habeas Corpus

---

The petition for review is denied.

**SUPREME COURT**  
**FILED**

MAR 12 2008

Frederick K. Ohlrich Clerk

---

Deputy

Moreno, J., was absent and did not participate.

---

**GEORGE**

Chief Justice

# **EXHIBIT “H”**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION TWO

COURT OF APPEAL - SECOND DIST.

**FILED**

JAN - 3 2009

JOSEPH A. LANE Clerk

J. GUZMAN Deputy Clerk

In re

B200537

RODERIC OPALEC

(Super. Ct. No. BH004400)

on

(Steven R. Van Sicklen, Judge)

Habeas Corpus.

**ORDER**

THE COURT:

The court has read and considered the petition for writ of habeas corpus, filed July 16, 2007, and the informal response filed by the Attorney General on December 21, 2007. The petition is denied.



BOREN, P.J.



DOI TODD, J.



ASHMANN-GERST, J.

Roderic Opalec  
CDC:H-33214  
Correctional Training Facility  
P.O. Box 689 / East Dorm 64-Low  
Soledad, CA 93960

Case Number B200537  
Division 2

In Re:  
Roderick Opalec  
On  
Habeas Corpus

# Exhibit “I”

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****DEPT 100**

Date:	MAY 16, 2007	Judge	J. PULIDO	Deputy Clerk
Honorable:	STEVEN R. VAN SICKLEN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH004400				
In re, RODERIC OPALEC, Petitioner, On Habeas Corpus		Counsel for Respondent:		

**Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS**

The Court has read and considered petitioner's Writ of Habeas Corpus filed on December 8, 2006. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole (See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667 (hereafter *Rosenkrantz*).)

Petitioner was received in the Department of Corrections on October 10, 1992 after a conviction for attempted murder with use of a firearm. He was sentenced to seven years to life plus three years. His minimum parole eligibility date was October 10, 1999. The record reflects that at the time of the offense, petitioner was a member of a gang. On September 24, 1990, petitioner and five fellow gang members decided to retaliate against members of a rival gang. They drove two vehicles to Carson, CA, where they found the two victims who were members of the rival gang. They shot at the two victims, injuring one.

The Board found petitioner unsuitable for parole after a parole consideration hearing held on July 12, 2006. Petitioner was denied parole for one year. The Board concluded that petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision on his commitment offense.

The Court finds that there is some evidence to support the board's finding that "the motive for the crime is inexplicable or very trivial in relation to the offense" (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E).) "To fit the regulatory description, the motive must be materially less significant (or more "trivial") than those which conventionally drive people to commit the offense in question, and therefore more indicative of a risk of danger to society if the prisoner is released than is ordinarily present." (*In re Scott* (2004) 119 Cal.App.4<sup>th</sup> 871, at 893). Petitioner and his crime partners planned a drive-by shooting as retaliation against a rival gang. The Board was justified in finding that gang rivalry is a materially less significant motive than those which conventionally drive people to attempt to murder others.

The Board's determination of unsuitability is also supported by some evidence that "multiple victims were attacked, injured or killed in same or separate incidents." (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E).) Although no one was killed in the drive-by shooting, two men were attacked when petitioner and his crime partners fired on them. One of the victims was injured.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****DEPT 100**

Date:	MAY 16, 2007	Judge	J. PULIDO	Deputy Clerk
Honorable:	STEVEN R. VAN SICKLEN	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				

BH004400  
 In re,  
 RODERIC OPALEC,  
 Petitioner,  
 On Habeas Corpus

Counsel for Respondent:

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A copy of the petition is sent to the Office of the Attorney General.

A true copy of this minute order is sent via U.S. Mail as follows to the following parties:

Roderic Opalec  
 H-33214  
 Correctional Training Facility  
 P.O. Box 689  
 Soledad, CA 93960-0689

Department of Justice  
 Office of the Attorney General of the State of California  
 Gregory J. Marcot, Deputy Attorney General  
 110 West A Street, Suite 1100  
 San Diego, CA 92101

THE DOCUMENT TO WHICH THIS CERTIFICATE IS  
 ATTACHED IS A FULL, TRUE, AND CORRECT COPY  
 OF THE ORIGINAL ON FILE AND OF RECORD IN  
 MY OFFICE.

ATTEST JUL 02 2007

JOHN A. CLARKE, Executive Officer/Clerk of the  
 Superior Court of the State of California for the County  
 of Los Angeles, *Joseph M. Pulido*, Deputy

By *Joseph M. Pulido* JOSEPH M. PULIDO, S.C.C.  
 233219



<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		<b>COPIED COPY</b> OF ORIGINAL FILED Los Angeles Superior Court
PLAINTIFF/PETITIONER:  RODERIC OPALEC		JUL 02 2007 John A. Clarke, Executive Officer/Clerk By <u>JP</u> , Deputy Joseph M. Pulido
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER:  BH004400

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

<input type="checkbox"/> Order Extending Time	<input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus
<input type="checkbox"/> Order to Show Cause	<input type="checkbox"/> Order
<input type="checkbox"/> Order for Informal Response	<input type="checkbox"/> Order re:
<input type="checkbox"/> Order for Supplemental Pleading	<input checked="" type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

July 2, 2007  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
Joseph M. Pulido

Roderic Opalec  
H-33214  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960-0689

Department of Justice  
Office of the Attorney General of the State of  
California  
Gregory J. Marcot, Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

Roderick Opalec, H-33214  
Correctional Training Facility  
P.O. Box 689 / East Dorm 64-Low  
Soledad, CA. 93960-0689

RETURN RECEIPT  
REQUESTED

LEGAL MAIL





0000



94102

U.S. POSTAGE  
PAID  
TORRANCE, CA  
90503  
MAY 22, 08  
AMOUNT

\$10.50  
00076305-06

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL**™



7007 2680 0001 6678 0651

RETURN REPLY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division  
450 Golden Gate Ave. / P.O. Box 36060  
San Francisco, CA.  
94102-3483